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AGREEMENT §

PUBLIC UTILITY COMMISSION  
OF TEXAS

## ARBITRATION AWARD—TRACK 1 ISSUES

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**P.U.C. DOCKET NO. 28821**

<b>ARBITRATION OF NON-COSTING ISSUES</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>FOR SUCCESSOR INTERCONNECTION</b>	<b>§</b>	
<b>AGREEMENTS TO THE TEXAS 271</b>	<b>§</b>	
<b>AGREEMENT</b>	<b>§</b>	<b>OF TEXAS</b>

**ARBITRATION AWARD—TRACK 1 ISSUES**

This Arbitration Award for Track 1 issues establishes the terms and conditions for the portions of successor interconnection agreements to the Texas 271 Agreement adopted by the Public Utility Commission of Texas (Commission or PUC) in October 1999.<sup>1</sup> In this Track 1 Award, the Commissioners, acting as Arbitrators, address a number of issues including interconnection, reciprocal compensation, general terms and conditions, and performance measures. Issues related to unbundled network elements will be addressed in Track 2 of this proceeding.

Southwestern Bell Telephone Company, L.P. d/b/a SBC Texas (SBC Texas) and each competitive local exchange carrier (CLEC) that has requested arbitration in this proceeding pursuant to § 252 of the Federal Telecommunications Act of 1996<sup>2</sup> shall incorporate the decisions approved in this Award, including the Award matrix.

**I. JURISDICTION**

If an incumbent local exchange carrier (ILEC) and CLEC cannot successfully negotiate rates, terms, and conditions in an interconnection agreement (ICA), FTA § 252(b)(1) provides that either of the negotiating parties “may petition a State commission to arbitrate any open issues.” The Commission is a state regulatory body responsible for arbitrating ICAs approved

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<sup>1</sup> See *Investigation Into Southwestern Bell Telephone Company's Entry Into In-Region Interlata Service Under Section 271 of the Telecommunications Act of 1996*, Docket No. 16251, Order No. 55 (Oct. 13, 1999).

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U.S.C.) (FTA).

pursuant to the FTA. Pursuant to FTA § 252(b)(1) the Commission severed the non-costing issues for arbitration in this proceeding on October 31, 2003, as described more fully below.

## II. PROCEDURAL HISTORY

On May 1, 2002, the Commission initiated Docket No. 25834<sup>3</sup> to address the cost issues severed from Docket No. 24542.<sup>4</sup> Docket No. 25834 was abated on March 28, 2003, until (1) the Commission concluded its Triennial Review process;<sup>5</sup> (2) the Commission's obligations under the *Triennial Review Order* were relieved or lifted; or (3) until such time as the Commission voted to un-abate the proceeding. On August 25, 2003, AT&T Communications of Texas, LP, TCG Dallas, and Teleport Communications Houston, Inc. (collectively referred to as AT&T) filed a petition for arbitration with SBC Texas that was assigned Docket No. 28412.<sup>6</sup> At its September 18, 2003 open meeting, the Commission expressed its intention to process all arbitrations for successor agreements to the Texas 271 Agreement (T2A) and T2A-based ICAs expiring on October 13, 2003 on a consolidated basis under FTA § 252(g). SBC Texas agreed to extend AT&T's current interconnection agreement and the widely-adopted T2A agreements until June 30, 2004, or until such time as those agreements are replaced by new ICAs.<sup>7</sup> On September 23, 2003, the Commission initiated Docket No. 28600 to address the unbundled network element (UNE) costing and pricing issues, the non-recurring charges related to the same UNEs at issue in Docket No. 25834, and all non-costing and pricing issues at issue in Docket No. 28412. On October 8, 2003, Docket No. 28412 was abated until the conclusion of this proceeding.<sup>8</sup> Docket

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<sup>3</sup> *Proceeding on Cost Issues Severed from Docket No. 24542*, Docket No. 25834 (Oct. 23, 2003).

<sup>4</sup> *Petition of MCIMetro Access Transmission Services, LLC, Sage Telecom, Inc., Texas UNE Platform Coalition, McLeod USA Telecommunications Services, Inc., and AT&T Communications of Texas, LP for Arbitration with Southwestern Bell Telephone Company Under the Telecommunications Act of 1996*, Docket No. 24542 (May 1, 2002).

<sup>5</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competitive Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-388, 96-98, 98-147, Order, FCC 03-36 (Aug. 21, 2003) (*Triennial Review Order*).

<sup>6</sup> *Petition of AT&T Communications of Texas, LP, TCG Dallas, and Teleport Communications Houston, Inc. for Arbitration with Southwestern Bell Telephone d/b/a SBC Texas Pursuant to Section 252(b)(1) of the Federal Telecommunications Act of 1996*, Docket No. 28412 (pending).

<sup>7</sup> Open Meeting Tr. at 151 (Sept. 18, 2003); See Docket No. 28412, Letter to Judge Cooper and Judge Klaus (Sept. 22, 2003).

<sup>8</sup> See Docket No. 28412, Order No. 3 (Oct. 8, 2003).

No. 28600 effectively provides parties the relief originally sought in Docket No. 25834; therefore, on October 23, 2003, Docket No. 25834 was dismissed as moot.<sup>9</sup>

On October 22, 2003, AT&T, SBC Texas, and numerous CLECs filed a request to modify the existing procedural schedule in Docket No. 28600 to sever non-costing issues.<sup>10</sup> Competitive Telecommunications Group (CTG)<sup>11</sup> did not object to the request to postpone non-costing issues as long as it did not preclude CTG from arbitrating the implementation of the issues relating to the resale of electronic service ordering charges, including charges for suspend/restore orders, resulting from Docket No. 24547.<sup>12</sup> At the October 23, 2003 open meeting, the Commission granted the request to sever the non-costing issues into another proceeding;<sup>13</sup> and granted CTG's request that issues regarding charges for suspend/restore orders continue on the same procedural schedule as the costing issues in Docket No. 28600.<sup>14</sup>

On January 23, 2004, pursuant to Order No. 1 in Docket No. 28821, the following parties individually filed petitions for arbitration to actively participate in the severed proceeding: Denton Telecom Partners, I, L.P. d/b/a Advantex Communications (Advantex); Navigator Telecommunications, LLC (Navigator),<sup>15</sup> Birch Telecom of Texas, Ltd., LLP and ionex

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<sup>9</sup> See Docket No. 25834, Order of Dismissal (Oct. 23, 2003). To the extent the documentation filed in Docket No. 25834 is admissible; it may be used in this proceeding. See Order No. 1 at 2 (Sept. 30, 2003).

<sup>10</sup> CLECs include MCImetro Access Transmission Services, LLC; MCIWorldcom Communications, Inc.; Brooks Fiber Telecommunications of Texas, Inc.; El Paso Networks, LLC; Sage Telecom of Texas; Birch Telecom of Texas; Posner Telecommunications, Inc.; AMA Techtel, Inc.; Carrera Communications, Inc.; Cbeyond Communications of Texas, LP; ICG Communications, Inc.; KMC Telecom, Inc.; Network Intelligence, Inc.; NTS Communications, Inc.; On Fiber Communications; Time Warner Telecom, LLP; Web Fire Communications, Inc.; Xspedius Management Co., LLC; XO Texas, Inc.; and Z-Tel Communications, Inc.

<sup>11</sup> CTG consists of AccuTel of Texas, LP; BasicPhone, Inc.; BroadLink Telecom, LLC; Capital 4 Outsourcing, Inc.; Cutter Communications, Inc. d/b/a GCEC Technologies; Cypress Telecommunications, Inc.; Express Telephone Services, Inc.; Extel Enterprises, Inc. d/b/a Extel; Connect Paging, Inc. d/b/a Get A Phone; Habla Comunicaciones, Inc.; IQC, LLC; National Discount Telecom, LLC; Quick-Tel Communications, Inc.; Rosebud Telephone, LLC; PhoneCo, LP; Smartcom Telephone, LLC; and WesTex Communications, LLC d/b/a WTX Communications.

<sup>12</sup> *Petition of AccuTel of Texas, Inc., d/b/a 1-800-4-A-PHONE and Southwestern Bell Telephone Company for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934*, Docket No. 24547 (May 16, 2002).

<sup>13</sup> See *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Docket No. 28821 (pending).

<sup>14</sup> Open Meeting Tr. at 128-40, 193-95 (Oct. 23, 2003).

<sup>15</sup> Navigator Telecommunications, LLC consists of Stratos Telecom, Inc., Comcast Phone of Texas, LLC, Heritage Technologies, Ltd., FamilyTel of Texas, LLC.

Communications South, Inc. (Birch/ionex); CLEC Joint Petitioners;<sup>16</sup> MCImetro Access Transmission Services, LLC, MCI WorldCom Communications, Inc., Intermedia Communications, Inc., and Brooks Fiber Telecommunications of Texas, Inc. (collectively MCI); AT&T Communications of Texas, LP, TCG Dallas, and Teleport Communications Houston, Inc. (collectively AT&T); CLEC Coalition,<sup>17</sup> Sage Telecom of Texas, LP (Sage),<sup>18</sup> and SBC Texas.<sup>19</sup>

Parties agreed that negotiations began on September 25, 2003, and that the 270-day period under the FTA concluded on June 21, 2004.<sup>20</sup> On July 16, 2004, the Commission issued a Protective Order to govern access to documents and information the parties designated to be confidential and exempt from public disclosure under the Texas Public Information Act (TPIA).<sup>21</sup>

On April 19, 2004, the Commission issued an order<sup>22</sup> addressing threshold issues and SBC Texas's motion to dismiss non-arbitrable issues. The Commission determined that: 1) it had the authority to adopt a performance-measure remedy plan; 2) it did not have sufficient

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<sup>16</sup> CLEC Joint Petitioners consists of AccuTel of Texas, LP, BasicPhone, Inc., BroadLink Telecom, LLC, Capital 4 Outsourcing, Inc., Cutter Communications, Inc. d/b/a GCEC Technologies, Cypress Telecommunications, Inc., DPI Teleconnect, LLC, Express Telephone Services Inc., Extel Enterprises, Inc. d/b/a Extel, Connect Paging, Inc., d/b/a Get A Phone, Habla Comunicaciones, Inc., IQC, LLC, National Discount Telecom, LLC, Quick-Tel Communications, Inc., Rosebud Telephone, LLC, PhoneCo, LP, Smartcom Telephone, LLC, Tex-Link Communications, Inc., and WesTex Communications, LLC d/b/a WTX Communications.

<sup>17</sup> CLEC Coalition consists of AMA Communications, LLC d/b/a AMA\*TechTel Communications, Cbeyond Communications of Texas, LP, ICG Telecom Group, Inc., KMC Telecom Holdings, Inc. on behalf of its certificated entities, KMC Telecom III, LLC, KMC Data, LLC and KMC Telcom V, Inc., d/b/a KMC Network Services, Inc., McLeodUSA Telecommunications Services, Inc., nii Communications Ltd., NTS Communications, Inc., Time Warner Telecom of Texas, LP, XO Texas, Inc., Xspedius Communications, Inc., and Z-Tel Communications, Inc., Carrera Communications, LP, Westel, Inc. OnFiber Communications, Inc., Yipes Enterprise Services, Inc., WebFire Communications, Inc.

<sup>18</sup> On April 26, 2004, Sage filed a request to withdraw its petition from arbitration. Sage's petition to withdraw was granted by Order No. 14 on May 18, 2004.

<sup>19</sup> SBC Texas filed an Omnibus Petition for Arbitration with all CLECs whose interconnection agreements expired on October 13, 2003 or would soon expire. *See* SBC Texas's Omnibus Petition for Arbitration, Appendix A at 15-20 for a listing of applicable CLECs (Jan. 23, 2004).

<sup>20</sup> *See* Docket No. 28412, Letter from SBC Texas to Judges Cooper, Kang and Klaus (Nov. 17, 2003).

<sup>21</sup> Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.002-552.353 (Vernon 1994 & Supp. 2003) (TPIA).

<sup>22</sup> Order Addressing Threshold Issues and Motion to Dismiss (Apr. 19, 2004).

information to determine whether certain issues are FTA § 251 issues and therefore declined to dismiss those issues at that time; 3) only some of the UNEs at issue had been declassified by the Federal Communications Commission (FCC) in the *Triennial Review Order*,<sup>23</sup> while certain other issues should remain in this proceeding; 4) the competing affidavits filed by SBC Texas, Birch and Sage did not provide sufficient information for the Commission to determine whether certain issues were negotiated, and therefore the Commission directed the Arbitrators to hold a separate hearing to further investigate this issue; and 5) consideration of voice over Internet protocol (VoIP) issues should be deferred in light of the FCC's notice of proposed rulemaking (NPRM).<sup>24</sup>

On April 23, 2004, the procedural schedule for this proceeding was temporarily abated allowing the Commission to fully consider SBC Texas's motion for expedited ruling for temporary abatement for sixty days. On May 5, 2004, the Commission granted SBC Texas's motion and abated the proceeding.<sup>25</sup> Among other things, the Commission's Order affirmed that the T2A and T2A-based agreements would be extended, procedural dates would be extended by sixty days, a revised procedural schedule would be developed, and the deadline for processing this case was extended for sixty days. Pursuant to SBC Texas's request, the T2A was extended until February 17, 2005.

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<sup>23</sup> See *Triennial Review Order* at para. 7.

<sup>24</sup> *In re IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 04-28 (Mar. 10, 2004).

<sup>25</sup> See Order Abating Proceeding (May 5, 2004).



On July 28, 2004, the Commission issued an order<sup>26</sup> granting the Joint CLECs<sup>27</sup> motion to sever disputed issues predicated on decisions made by the FCC in its *Triennial Review Order* but potentially affected by the D.C. Circuit's decision in *USTA II*.<sup>28</sup>

On August 18, 2004, the Commission addressed SBC Texas's motion for reconsideration of threshold issues.<sup>29</sup> Specifically, the PUC (1) excluded local switching for enterprise customers at the DS1 level and higher from consideration in this arbitration, and (2) allowed resolution of VoIP-in-the-middle issues in this arbitration. The remainder of SBC Texas's motion was denied.

On September 9, 2004, the Commission abated issues related to UNEs affected by the *USTA II* decision and severed those issues into "Track 2" of this proceeding.<sup>30</sup> The Commission determined that Track 2 issues should be abated pending the issuance of permanent rules by the FCC.<sup>31</sup>

On September 15 and 16, 2004, parties filed their proposed Decision Point Lists (DPL). On July 19, 2004, parties filed their direct testimony, with rebuttal testimony filed on August 23, 2004. The hearing on the merits was conducted on September 22-23, 2004, with the

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<sup>26</sup> See Order Severing Issues (June 5, 2004).

<sup>27</sup> The CLECs that joined in this Motion are the following active CLEC participants in this proceeding: AMA Communications, L.L.C. d/b/a AMA\*TechTel Communications, Cbeyond Communications of Texas, LP, ICG Telecom Group, Inc., KMC Telecom Holdings, Inc. on Behalf of its Certificated Entities, KMC Telecom III LLC, KMC Data LLC, and KMC Telecom V, Inc., d/b/a KMC Network Services, Inc., McLeodUSA Telecommunications Services, Inc., nii communications, Ltd., NTS Communications, Inc., Time Warner Telecom of Texas, L.P., XO Texas, Inc., Xspedius Communications, LLC, and Z-Tel Communications, Inc. (the "CLEC Coalition"); AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications Houston, Inc.; Birch Telecom of Texas, LTD, L.L.P. and ionex Communications South, Inc.; MCI; AccuTel of Texas, Inc., Basicphone, Inc., BroadLink Telecom, LLC; Capital 4 Outsourcing, Inc., GCEC Technologies, Cypress Telecommunications, Inc., DPI Teleconnect, LLC, Express Telephone Services, Inc., Extel Enterprises, Inc. d/b/a Extel, Connect Paging, Inc. d/b/a Get A Phone, Grande Communications Networks, Inc. d/b/a Grande Communications, Habla Comunicaciones, Inc., IQC, LLC, National Discount Telecom, LLC, Posner Telecommunications, Inc., Quick-Tel Communications, Inc., Rosebud Telephone, LLC, PhoneCo, L.P., Smartcom Telephone, LLC, Tex-Link Communications, Inc., and WesTex Communications, LLC d/b/a WTX Communications (collectively, "Competitive Telecommunications Group").

<sup>28</sup> *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*).

<sup>29</sup> See Order Addressing Motion for Reconsideration of Threshold Issues (Aug. 18, 2004).

<sup>30</sup> See Order Abating Track 2 (Sept. 9, 2004).

<sup>31</sup> The FCC issued permanent rules on February 4, 2005, with an effective date of March 11, 2005.

Commissioners sitting as arbitrators. Initial post-hearing briefs were filed on November 1, 2004 and reply briefs were filed on November 15, 2004.

### III. RELEVANT STATE AND FEDERAL PROCEEDINGS

#### Relevant Commission Decisions

##### *SWBT Mega-Arbitration Awards*

The FTA became effective in February 1996. Soon thereafter, several proceedings—collectively referred to as the Mega-Arbitrations—were initiated and consolidated for the purpose of arbitrating the first interconnection agreements in Texas under the new federal statute. The first Mega-Arbitration Award, issued November 1996, in Docket No. 16189, established rates for interconnections, services, and network elements in accordance to the standards set forth in FTA § 252(d).<sup>32</sup> Interim rates were established and SBC Texas was ordered to revise its cost studies. The Second Mega-Arbitration Award, issued December 1997 in Docket No. 16189, approved cost studies and established permanent rates for local interconnection traffic.<sup>33</sup>

##### *Texas 271 Agreement “T2A”*

After a series of “collaborative work sessions” between SBC Texas and CLECs, the Commission approved the T2A on October 13, 1999. As a condition of receiving approval pursuant to FTA § 271 to provide long-distance services within the state, SBC Texas agreed to offer this standard interconnection agreement to all CLECs for a period of four years.<sup>34</sup> Among other things, the T2A established prices, terms and conditions for resale, interconnection, and the use of UNEs. The T2A maintained entirely the rates in effect from the Mega-Arbitrations but

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<sup>32</sup> *Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops Agreement Between MFS Communications Company, Inc. and Southwestern Bell Telephone Company*, Docket No. 16189, *et al.*, Award (Nov. 8, 1996) (*First Mega-Arbitration Award*).

<sup>33</sup> *Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops Agreement Between MFS Communications Company, Inc. and Southwestern Bell Telephone Company*, Docket No. 16189, *et al.*, Award (Dec. 19, 1997) (*Second Mega-Arbitration Award*).

<sup>34</sup> Certain sections of the T2A expired October 13, 2001; others expired October 13, 2003.

with new rates for collocation developed in a separate proceeding, Docket No. 21333.<sup>35</sup> Pursuant to FTA § 252(i), the majority of the CLECs in Texas subsequently opted into the T2A.

### ***Docket No. 21982***

In Docket No. 21982,<sup>36</sup> the Commission sought to resolve reciprocal compensation issues involving the T2A. The Commission solicited participation by carriers that had T2A agreements expiring around January of 2000 or that had selected the first or third reciprocal compensation option of attachment 12.<sup>37</sup> In Docket No. 21982, the Commission established the following bifurcated compensation rate for both local voice traffic and local ISP-bound traffic: \$0.0010887 per call + \$0.0010423 per minute.<sup>38</sup> In addition, the Commission found that reciprocal compensation arrangements applied to calls originating from and terminating to an end-user within a mandatory single or multi-exchange local calling area. However, the Commission did not resolve foreign-exchange (FX) issues.<sup>39</sup>

### ***Docket No. 24015***

In Docket No. 24015, the Commission considered FX issues and determined that the compensation method in the *ISP Remand Order*<sup>40</sup> applied to all traffic bound for ISPs.<sup>41</sup> In addition, the Commission clarified that while the *ISP Remand Order* established a \$0.0007 per minute cap for compensation of ISP-bound traffic, the *ISP Remand Order* also contemplated that a state commission may have ordered LECs to exchange traffic on a bill and keep basis or may

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<sup>35</sup> *Proceeding to Establish Permanent Rates for Southwestern Bell Telephone Company's Revised Physical and Virtual Collocation Tariffs*, Docket No. 21333, Order Approving Revised Arbitration Award (June 7, 2001).

<sup>36</sup> *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Docket No. 21982.

<sup>37</sup> Docket No. 21982, Order No. 1 Order Regarding Proceeding, Requesting Statements of Position at 1 (Jan. 14, 2000).

<sup>38</sup> Docket No. 21982, Revised Arbitration Award at 53 (Nov. 15, 2000).

<sup>39</sup> See Docket No. 21982, Order Approving Revised Arbitration Award, as Modified, and Approving Implementing Language at 5 (Nov. 15, 2000) and Revised Arbitration Award at 18 n.59 (Nov. 15, 2000).

<sup>40</sup> *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, FCC 01-131 (Apr. 27, 2001) (*ISP Remand Order*).

<sup>41</sup> *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Inter-Carrier Compensation for "FX-Type" Traffic against Southwestern Bell Telephone Company*, Docket No. 24015, Order on Reconsideration (Nov. 4, 2004).

have otherwise not required payment of compensation (effectively bill and keep).<sup>42</sup> Given that the Commission had set a rate for only local ISP-bound traffic in Docket No. 21982, the Commission found that bill and keep applied to ISP-bound FX traffic.

### **Relevant FCC Decisions**

#### ***Local Competition Order***

In the *Local Competition Order*,<sup>43</sup> the FCC implemented FTA §§ 251 and 252. The FCC identified UNEs that ILECs must make available to competitors, and established minimum requirements for nondiscriminatory interconnection and collocation arrangements.

#### ***UNE Remand Order***

In late 1999, the FCC issued the *UNE Remand Order* in response to the Supreme Court's January 1999 decision,<sup>44</sup> which directed the FCC to reevaluate the unbundling obligations established by FTA § 251.<sup>45</sup> The Court required the FCC to revisit its application of the "necessary" and "impair" standards in FTA § 251(d)(2).<sup>46</sup> In applying the "necessary" and "impair" standard to individual network elements, the FCC made certain critical determinations. Among them, the FCC modified the definition of the loop network element to include all features, functions, and capabilities of the transmission facilities between an ILEC's central office and the loop demarcation point at the customer premises.<sup>47</sup>

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<sup>42</sup> Docket No. 24015, Order on Clarification (Jan. 5, 2005).

<sup>43</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, FCC 96-325 (Aug. 8, 1996) (*Local Competition Order*).

<sup>44</sup> *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999) (*Iowa Utils. Bd.*).

<sup>45</sup> *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, (Nov. 5, 1999) (*UNE Remand Order*).

<sup>46</sup> *UNE Remand Order* para. 1.

<sup>47</sup> *UNE Remand Order* at n. 301, (revised definition retains the definition from the *Local Competition Order*, but replaces the phrase "network interface device" with "demarcation point," and makes explicit that dark fiber and loop conditioning are among the "features, functions, and capabilities" of the loop).

### ***ISP Remand Order***

The *ISP Remand Order* established a \$0.0007 per minute of use cap for compensation of ISP-bound traffic.<sup>48</sup> In conjunction with the \$0.0007 cap, the FCC established the “mirroring rule,” which requires incumbent LECs to pay the same rate for ISP-bound traffic that they receive for section 251(b)(5) traffic.<sup>49</sup> The *ISP Remand Order* also contemplated that a state commission may have ordered LECs to exchange traffic on a bill and keep basis or may have otherwise not required payment of compensation (effectively bill and keep). The FCC clarified that “because the rates set forth above are *caps* on intercarrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps we adopt here or on a bill and keep basis (or otherwise have not required payment of compensation for this traffic).”<sup>50</sup>

### ***Virginia Arbitration Decision***

In 2002, the FCC’s Wireline Bureau, acting on delegated authority on behalf of the State of Virginia, issued a decision in a compulsory arbitration between Verizon and several CLECs. That decision addressed many key issues, including certain issues on interconnection and reciprocal compensation.<sup>51</sup> This Commission has recognized at least one decision in the *Virginia Arb* as on-point in a recent case. In that case, the Commission applied the *Virginia Arb*’s holding to an issue involving reciprocal compensation costs for transporting traffic to the point of interconnection.<sup>52</sup>

In regard to several issues in this proceeding, the parties cited the *Virginia Arb* as precedent that the Commission should follow in making its decisions. The Commission recognizes that no party fully endorses complete deferral to the *Virginia Arb*, as parties have

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<sup>48</sup> *ISP Remand Order* at paras. 8 and 78.

<sup>49</sup> *ISP Remand Order* at paras. 8 and 89.

<sup>50</sup> *ISP Remand Order* at para. 80.

<sup>51</sup> *Petition of Worldcom, Inc., et al, Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218, 00-249, and 00-251, DA-02-1731 (July 17, 2002) (*Virginia Arb*).

<sup>52</sup> See *Southwestern Bell Tel. Co. v. PUC*, 348 F.3d 482 (5th Cir. 2003); *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(B)(1) of the Federal Telecommunications Act of 1996*, Docket No. 22315, Order Approving Revised Arbitration Award (Mar. 14, 2002).

found distinguishing factors for reaching different conclusions than those in the *Virginia Arb.* In deciding the issues in the current proceeding, the Commission finds that the *Virginia Arb.* is persuasive, but not binding, authority.<sup>53</sup> The FCC's Wireline Bureau (in place of the Virginia State Corporation Commission) arbitrated an interconnection agreement for parties in the state of Virginia in the same way that this Commission now arbitrates an interconnection agreement for parties in the state of Texas. Consequently, the Wireline Bureau played the role of a state commission in the *Virginia Arb.* In the more than two years since the issuance of the *Virginia Arb.*, the industry has changed significantly. Therefore, because the parties have presented issues in this arbitration that this Commission has previously addressed, the Commission finds that following its own prior decisions in those instances better reflects circumstances specific to this state not otherwise considered in the *Virginia Arb.*

### ***Triennial Review Order***

In the *Triennial Review Order*, the FCC determined what elements ILECs must offer on an unbundled basis. The FCC required unbundled access to: mass market loops, certain subloops, network interface devices (NIDs), switching for mass market and OSS functions.<sup>54</sup> The FCC did not require unbundled access to: enterprise market loops, switching for enterprise market, packet switching.<sup>55</sup> Under certain conditions, the FCC required unbundled access to: transport, signaling networks and call-related databases.<sup>56</sup> In addition, the FCC redefined the dedicated transport network element as those "transmission facilities that connect incumbent LEC switches or wire centers."<sup>57</sup> The FCC found that facilities outside of the ILEC's local network should not be considered part of the dedicated transport network element subject to unbundling.<sup>58</sup> Accordingly, the FCC observed that "[o]ur determination here effectively

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<sup>53</sup> The Commission notes that federal courts have held that arbitration awards do not constitute binding precedent. For example, the Fourth Circuit stated that "arbitration awards have no precedential value." *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 991 F.2d 141, 147 (4th Cir. 1993). The Fifth Circuit noted that "Courts are not bound by arbitral rulings, nor are the arbitrators themselves obliged to follow the rule of *stare decisis*." *Smith v. Kerrville Bus. Co.*, 709 F.2d 914, 918 n.2 (5th Cir.1983).

<sup>54</sup> *Triennial Review Order* at para. 7.

<sup>55</sup> *Triennial Review Order* at para. 7.

<sup>56</sup> *Triennial Review Order* at para. 7.

<sup>57</sup> *Triennial Review Order* at para. 7.

<sup>58</sup> *Triennial Review Order* at para. 366.

eliminates ‘entrance facilities’ as UNEs . . . .”<sup>59</sup> The FCC also noted that section 271(c)(2)(B) established an independent obligation for ILECs to provide access to loops, switching, transport, and signaling, regardless of any unbundling analysis under section 251.<sup>60</sup> The D.C. Circuit vacated and/or remanded portions of the *Triennial Review Order* in *USTA II*.<sup>61</sup>

### ***Interim UNE Order***

The FCC’s *Interim UNE Order*<sup>62</sup> required, on an interim basis, ILECs to continue providing unbundled access to switching, enterprise market loops, and dedicated transport under the same rates, terms and conditions that applied under existing interconnection agreements as of June 15, 2004.<sup>63</sup> The FCC recognized that “by freezing in place carriers’ obligations as they stood on June 15, 2004, we are in many ways preserving contract terms that *predate* the vacated rules.”<sup>64</sup> These rates, terms, and conditions apply until the effective date of the FCC’s final unbundling rules or March 13, 2005 (six months after Federal Register publication of the *Interim UNE Order*), except to the extent superseded by: (1) negotiated agreements, (2) an intervening FCC order, or (3) a state commission order raising the rates for UNEs.<sup>65</sup> After the initial six months, in the absence of the FCC subjecting particular UNEs to unbundling, those elements would still be made available to serve existing customers for a subsequent six-month period, but at higher rates.<sup>66</sup>

### ***Triennial Review Remand Order***

On February 4, 2005, the FCC issued the *Triennial Review Remand Order*<sup>67</sup> in response to the remand of the *Triennial Review Order* from the D.C. Circuit. The *Triennial*

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<sup>59</sup> *Triennial Review Order*. at para. 366 n.1116.

<sup>60</sup> *Triennial Review Order* at para. 7.

<sup>61</sup> *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

<sup>62</sup> *Unbundled Access to Network Elements*, WC Docket No. 04-313, Order and Notice of Proposed Rulemaking, FCC 04-179, (Aug. 20, 2004) (*Interim UNE Order*).

<sup>63</sup> *Interim UNE Order* at para. 29.

<sup>64</sup> *Interim UNE Order* at para. 23.

<sup>65</sup> *Interim UNE Order* at para. 23.

<sup>66</sup> *Interim UNE Order* at para. 23.

<sup>67</sup> *Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 01-388 and CC Docket No. 01-388, Order on Remand, FCC 04-290 (Feb. 4, 2005) (*Triennial Review Remand Order*).

*Review Remand Order* addressed the unbundling of network elements, including dedicated interoffice transport, high-capacity loops and mass market local circuit switching. The *Triennial Review Remand Order* also addressed the conversion of special access circuits to UNEs and the implementation of the unbundling determinations.

### **Relevant Court Decisions**

#### ***Iowa Utilities Board v. FCC Cases (Iowa I and Iowa II)***

In *Iowa I*, the Eighth Circuit Court of Appeals ruled that the FCC lacked jurisdiction to issue rules regarding the wholesale prices an ILEC could charge competitors to use its facilities to provision local telephone service.<sup>68</sup> The Supreme Court reversed the Eighth Circuit, holding that the FCC did have jurisdiction to design a pricing methodology.<sup>69</sup> On remand in *Iowa II*, the Eighth Circuit held, in relevant part, that FTA § 252(d)(1) does not permit costs to be based on a hypothetical network.<sup>70</sup> However, on appeal of *Iowa II*, the Supreme Court held that under section 252(d)(1) of the FTA, the FCC can require state utility commissions to set rates charged by ILECs for lease of network elements to CLECs on a forward-looking basis untied to historical or past investment.<sup>71</sup> In addition, the Supreme Court found that the total element long run incremental cost (TELRIC) methodology chosen by the FCC to set rates for lease of network elements to CLECs is not inconsistent with the FTA (TELRIC calculates the forward-looking cost by reference to a hypothetical, most efficient element at existing wire-centers, not the actual network element being provided).<sup>72</sup>

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<sup>68</sup> *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 793-800 (8th Cir. 1997) (*Iowa I*).

<sup>69</sup> *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385 (1999).

<sup>70</sup> *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 751-752 (8th Cir. 2000) (vacating 47 C.F.R. § 51.505(b)(1)) (*Iowa II*).

<sup>71</sup> *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 498-501 (2002).

<sup>72</sup> *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 501 (2002).



## USTA I

In *USTA I*,<sup>73</sup> the D.C. Circuit considered the *Line Sharing Order*<sup>74</sup> and the *Local Competition Order* and remanded both to the FCC for further review. The D.C. Circuit disagreed with the FCC's impairment standard for determination of UNEs under the *Local Competition Order*, holding that the FCC did not differentiate between cost disparities between new entrants and incumbents.<sup>75</sup> The D.C. Circuit also objected to broad unbundling standards in markets that did not track relevant market characteristics and capture significant variation between markets.<sup>76</sup> The D.C. Circuit also reversed the FCC's unbundling of the high-frequency portion of the loop under the *Line Sharing Order*, finding that the FCC had failed to adequately consider intermodal competition from cable providers.<sup>77</sup>

## USTA II

In *USTA II*,<sup>78</sup> the follow-up case to *USTA I*, the D.C. Circuit addressed the *Triennial Review Order* and again, remanded a majority of that order to the FCC for further consideration. In large part, the D.C. Circuit found that the FCC lacked authority to subdelegate to the states the nationwide impairment determination. Thus, among other findings, the D.C. Circuit vacated the FCC's decision to order unbundling of mass market switches and its impairment findings with respect to dedicated transport elements.<sup>79</sup> The D.C. Circuit also remanded for further consideration the issue of whether entrance facilities are "network elements."<sup>80</sup>

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<sup>73</sup> *United States Telecom Ass'n v. FCC*, 290 F.3d 415, (D.C. Cir. 2002) (*USTA I*).

<sup>74</sup> *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 98-147, Third Report and Order, FCC 99-355 (Dec. 9, 1999).

<sup>75</sup> *USTA I* at 428.

<sup>76</sup> *USTA I* at 423.

<sup>77</sup> *USTA I* at 429.

<sup>78</sup> *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*).

<sup>79</sup> *USTA II* at 571, 574.

<sup>80</sup> *USTA II* at 586.

#### IV. DISCUSSION OF MAJOR ISSUES

This proceeding addresses the issues in the Joint DPL admitted as Joint Exhibit 1. The Commission's detailed decisions with respect to each of the DPL issues are attached to this Order, and incorporated herein. Below, the Commission provides an expanded discussion of its decisions on the major issues presented at hearing.<sup>81</sup>

##### Network Architecture/Interconnection

##### ***Impact of the Triennial Review Order on Entrance Facilities/Interconnection (DPL Issue Nos. 1, 11, 32, 93 and 97)***

Under FTA § 251, ILECs have a duty to provide for interconnection of the ILEC's network with the facilities and equipment of CLECs. Prior to the *Triennial Review Order*, CLECs commonly used entrance facilities, a UNE, to interconnect with the ILECs' networks. Since TELRIC pricing applied to both entrance facilities and interconnection facilities,<sup>82</sup> any distinction between these two had no significance until the *Triennial Review Order*<sup>83</sup> and *Triennial Review Remand Order*<sup>84</sup> eliminated entrance facilities (transmission facilities that connect competitive LEC networks with incumbent LEC networks)<sup>85</sup> as UNEs. SBC Texas claimed that since the FCC no longer required unbundled access to entrance facilities, SBC Texas did not have to provide such facilities for interconnection at TELRIC rates.<sup>86</sup> CLEC parties claimed that the *Triennial Review Order* only modified the availability of entrance facilities as UNEs and ILECs should continue to provide facilities at TELRIC rates for interconnection purposes.<sup>87</sup> In the *Triennial Review Remand Order*, the FCC clarified that:

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<sup>81</sup> The Commission considered five major topics at the hearing: network architecture/interconnection, reciprocal compensation, general terms and conditions, performance measures and resale. Only pre-filed testimony addressed all other issues submitted by the parties but not addressed at the hearing.

<sup>82</sup> *Local Competition Order* para. 628.

<sup>83</sup> *Triennial Review Order* at para. 366 n.1116.

<sup>84</sup> *Triennial Review Remand Order* at paras. 137-141.

<sup>85</sup> See *Triennial Review Remand Order* at para. 136.

<sup>86</sup> See Direct Testimony of Carl C. Albright, Jr., SBC Texas Ex. 1 at 18-23.

<sup>87</sup> See Direct Testimony of John D. Schell, Jr. and David L. Talbott (Network), AT&T Ex. 6 at 10-14, 69-76; Rebuttal Testimony of John D. Schell, Jr. and David L. Talbott (Network), AT&T Ex. 7 at 5-12, 43-46.

our finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. Thus, competitive LECs will have access to these facilities at cost-based rates to the extent that they require them to interconnect with the incumbent LEC's network.<sup>88</sup>

Given that entrance facilities are not available as UNEs,<sup>89</sup> a CLEC should not be able to obtain those facilities at TELRIC rates merely by characterizing those same facilities as interconnection facilities instead of entrance facilities. To do so would contradict the FCC's finding that ILECs do not have to provide entrance facilities as UNEs. This Commission concludes that, whether for interconnection or for unbundled access to network elements, entrance facilities are not subject to TELRIC rates. Although CLECs no longer have access to entrance facilities as UNEs, CLECs continue to have the right to obtain interconnection facilities pursuant to FTA § 251(c)(2) and the FCC's rules<sup>90</sup> for the transmission and routing of telephone exchange service and exchange access service.

***Single Point of Interconnection v. Multiple Points of Interconnection (DPL Issue Nos. 84-87).***

***a. Number of Points of Interconnection (DPL Issue Nos. 3, 6, 116 and 150)***

The Commission agrees with SBC Texas that a single point of interconnection (POI) should only be used as a market entry mechanism. The Commission previously made a determination on this issue in Docket Nos. 21791 and 22441.<sup>91</sup> Therefore, consistent with prior Commission decisions, the Commission finds that CLECs may establish a single point of interconnection per LATA, but only as a market entry mechanism. The Commission further concludes that CLECs shall establish additional POIs when traffic exceeds 24 DS1s.

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<sup>88</sup> *Triennial Review Remand Order* at para. 140.

<sup>89</sup> *Triennial Review Remand Order* at paras. 137-141.

<sup>90</sup> See 47. C.F.R. § 51.305.

<sup>91</sup> *Petition of Southwestern Bell Telephone Company for Arbitration with MCI Worldcom Communications, Inc. Pursuant to Section 251 (b)(1) of the Federal Telecommunications Act of 1996*, Docket No. 21791, Arbitration Award (May 26, 2000); Docket No. 21791, Order Approving Interconnection Agreement (Sept. 20, 2000); *Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252 as amended by the Telecommunications Act of 1996, and PURA for rates, terms and conditions with Southwestern Bell Telephone Company*, Docket No. 22441, Arbitration Award (Aug. 11, 2000).

b. Distant POI and Expensive Form of Interconnection (DPL Issue Nos. 3-5)

On the issue of distant POI and expensive form of interconnection, the courts have previously rejected SBC Texas's position. This Commission has also addressed this issue in Docket No. 28021.<sup>92</sup> The Fifth Circuit remanded the PUC's decision in Docket No. 22315, in which the Commission concluded that AT&T could choose to place its POI wherever AT&T wished within a given LATA, but that AT&T must reimburse SBC Texas for costs incurred in carrying traffic over 14-miles to the POI.<sup>93</sup>

The court found that transport costs incurred by SBC Texas in carrying intraLATA traffic outside a particular local calling area to AT&T's chosen POI "are governed by the FCC's 'reciprocal compensation' rules pursuant to [47 C.F.R.] § 51.703, rather than by 'interconnection terms' under [47 U.S.C.] §§ 251(c)(2)(D) and 252(d)(1)."<sup>94</sup> Therefore, the court prohibited SBC Texas from charging AT&T for the costs of carrying this traffic to the POI and instead required SBC Texas to bear its own costs for delivering such traffic to the POI. On remand, in Docket No. 28021, in keeping with the Fifth Circuit's opinion, this Commission rejected the theory of "expensive interconnection" and affirmed that each party must bear the costs of transporting their own originating traffic to whatever POI(s) that AT&T may select within a given LATA.<sup>95</sup> Consistent with the Fifth Circuit's ruling and Commission precedent, the Commission declines to adopt SBC Texas's rationale and language on Distant POI, expensive form of interconnection, and 14-mile limit.

***Tandem Switching v. Direct End-Office Trunking (DPL Issue Nos. 7, 82 and 104)***

The Commission agrees with the concerns that tandem exhaust, cost, network integrity and ability to serve multiple CLECs together suggest that CLECs should establish direct end

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<sup>92</sup> Remand of Docket No. 22315 (*Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, LP, TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(B)(1) of The Federal Telecommunications Act of 1996*), Docket No. 28021, Arbitration Award (June 24, 2004).

<sup>93</sup> *Southwestern Bell Tel. Co. v Public Util. Comm'n*, 348 F.3d 482, 487 (5th Cir. 2003); see also *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(B)(1) of the Federal Telecommunications Act of 1996*, Docket No. 22315, Order Approving Revised Arbitration Award at 4-6 (Mar. 14, 2002).

<sup>94</sup> *Southwestern Bell Tel. Co. v Public Util. Comm'n of Texas*, 348 F.3d 482, 487 (5th Cir. 2003).

<sup>95</sup> Docket No. 28021, Arbitration Award (June 24, 2004).

office trunking (DEOT) once the parties exchange traffic in excess of 1 DS1.<sup>96</sup> The Commission has already concluded in Docket No. 21791 that DEOTs are necessary, stating that “[g]rowth in traffic exchanged by carriers on a LATA-wide basis, an exchange basis, and a central office basis, however, warrants the addition of POIs and/or direct end-office trunking.”<sup>97</sup> Further, in the current proceeding, SBC Texas has offered not to charge CLECs for transport facilities from a POI to end offices located in the same local calling area.<sup>98</sup> This proposal should alleviate the cost concerns raised by the CLECs.<sup>99</sup> Therefore, the Commission concludes that CLECs must establish DEOTs when a CLEC’s traffic from a POI to an end office located in the same local calling area exceeds 24 DS0s.

***Points of Interconnection at Customer Premises and Outside Plant (DPL Issue No. 1)***

SBC Texas claimed that pursuant to the *Triennial Review Order*, a CLEC may interconnect with SBC Texas only on SBC Texas’s network. SBC Texas contended that SBC Texas network did not include outside plant facilities and customer premises as defined by the *Triennial Review Order*.<sup>100</sup> In contrast, the CLECs argued that outside plant facilities and the customer premises are “technically feasible” points of interconnection. The CLEC parties argued that they may choose any technically feasible method of interconnection and that SBC Texas may not restrict their right to obtain facilities at TELRIC rates for the purpose of network interconnection.<sup>101</sup>

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<sup>96</sup> See Direct Testimony of Carl C. Albright, Jr., SBC Texas Ex. 1 at 34-35; Rebuttal Testimony of Carl C. Albright, Jr., SBC Texas Ex. 2 at 21-23; Rebuttal Testimony of Thomas Mark Neinast, SBC Texas Ex. 29 at 11.

<sup>97</sup> *Petition of Southwestern Bell Telephone Company for Arbitration with MCI Worldcom Communications, Inc. Pursuant to Section 252(B)(1) of the Federal Telecommunications Act of 1996*, Docket No. 21791, Arbitration Award at 16 (May 26, 2000).

<sup>98</sup> See Rebuttal Testimony of Carl C. Albright, Jr., SBC Texas Ex. 2 at 21-22; see also SBC Texas (Dec. 7, 2004), AIS No. 456, Docket No. 28821.

<sup>99</sup> SBC Texas’s specific proposal is as follows: 1.1.4.1 At such time as traffic between any SBC Texas end office and the tandem switch it subtends exceeds 24 DSOs, measured at peak over a one-month period, AT&T will establish two-way direct end office trunking to that end office. These trunk groups will be established as primary high trunk groups, which will overflow to the local, local/IntraLATA, or local/access tandem serving that end office. SBC Texas will not charge AT&T for the transport facilities, including multiplexing, between the serving tandem switch and the end office used for the direct end office trunk group, irrespective of the number of DS-1 facilities used or the location of AT&T’s POI.

<sup>100</sup> See Direct Testimony of Carl C. Albright, Jr., SBC Texas Ex. 2 at 18.

<sup>101</sup> See Direct Testimony of John D. Schell, Jr. and David L. Talbott (Network), AT&T Ex. 6 at 79, 109, 134-135.

The Commission finds that CLECs may interconnect with SBC Texas only within SBC Texas's network. Furthermore, the Commission finds that carrier hotels, outside plant facilities and customer premises are not a part of SBC Texas's network. As stated earlier, under FTA § 251, ILECs have a duty to provide for interconnection of the ILEC's network with the facilities and equipment of CLECs. Interconnection is accomplished by connecting a CLEC's network with the ILEC's network for the mutual exchange of traffic. The *Triennial Review Order* clarified what constitutes the ILEC's network. Specifically, in paragraph 366, the FCC concluded that:

We find that transmission facilities connecting incumbent LEC switches and wire centers are an inherent part of the incumbent LEC's local network Congress intended to make available to competitors under section 251(c)(3). On the other hand, we find that transmission links that simply connect a competing carrier's network to the incumbent LEC's network are not inherently a part of the incumbent LEC's local network. Rather, they are transmission facilities that exist *outside* the incumbent LEC's local network.<sup>102</sup>

Thus, the FCC found that links such as entrance facilities, used for connecting ILEC and CLEC networks, are not part of the ILEC's network. The Commission concludes that the ILEC's network does not include entrance facilities (regardless of whether for interconnection or for unbundled access to network elements) and therefore TELRIC rates do not apply.

***Combining Traffic (DPL Issue Nos. 16, 21, 80 and 88)***

This issue addresses the types of traffic that CLECs should be able to combine on the same trunk and how it relates to network efficiency and billing concerns. CLEC parties argued that the network would be used inefficiently if they were required to segregate their traffic according to SBC Texas's proposal.<sup>103</sup> The CLECs referred to the current ICA, which allows for the combination of multi-jurisdictional traffic on the same trunk.<sup>104</sup> SBC Texas argued that IXC-carried intraLATA and interLATA traffic should be segregated from local or non-IXC carried intraLATA traffic.<sup>105</sup> SBC Texas argued that the segregation of traffic greatly simplifies the billing and tracking of traffic and limits the opportunities for fraud.

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<sup>102</sup> *Triennial Review Order* at para. 366.

<sup>103</sup> See Direct Testimony of John D. Schell, Jr. and David L. Talbott (Network), AT&T Ex. 6 at 131-134.

<sup>104</sup> See Direct Testimony of John D. Schell, Jr. and David L. Talbott (Network), AT&T Ex. 6 at 131-134.

<sup>105</sup> See Direct Testimony of Thomas Mark Neinast, SBC Texas Ex. 28 at 19-26.

The Commission notes that there has been no change in law or circumstance to support SBC Texas's proposed change to existing T2A provisions which allow multi-jurisdictional traffic on the same trunk. Further, the Commission recently addressed this issue in the context of 00/VAD calls in Docket No. 24306, where the Commission found that traffic combination was limited to local, intrastate intraLATA, and intrastate interLATA traffic.<sup>106</sup> Therefore, the Commission declines to modify existing T2A contract language on this issue.

***One Way v. Two-Way Trunks (DPL Issue Nos. 17, 18, 48, 66-68, 82, 98, 103 and 121)***

SBC Texas argued that multiple one-way trunks are inefficient and that two-way trunks conserve network resources and optimize the call-carrying capacity of the trunk group by reducing the number of switch ports needed. Additionally, SBC Texas indicated that the Commission has previously rejected the CLECs' proposal to have the ability to select one-way trunking.<sup>107</sup> AT&T, Xspedius, and KMC argued that FCC's interconnection rules allow them to select either one-way or two-way trunking at their discretion.<sup>108</sup> MCI argued that the shared costs of usage on two-way trunks should be proportioned based on a party's use of the shared facilities.<sup>109</sup>

The Commission finds that one-way trunks are less efficient than two-way trunk groups because two-way trunk groups provide the maximum flexibility to carry a call placed in either direction. The Commission notes that using two-way trunk groups reduces the total number of trunks required to carry a particular traffic load.<sup>110</sup> Furthermore, two-way trunk groups provide the maximum flexibility to carry calls placed in either direction.<sup>111</sup> The cost of transport facilities must be equitably shared in proportion to the originating carrier's traffic.<sup>112</sup> If parties

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<sup>106</sup> *Petition of Sprint Communications Company, L.P. dba Sprint for Arbitration with Verizon Southwest, Inc. fka GTE Southwest, Inc. dba Verizon Southwest and Verizon Advanced Data Inc., under the Telecommunications Act of 1996 for Rates, Terms, and Conditions and related arrangements for Interconnection*, Docket No. 24306, Amended Final Order at 4 (May 14, 2004).

<sup>107</sup> See Direct Testimony of Thomas Mark Neinast, SBC Texas Ex. 28 at 41.

<sup>108</sup> See Direct Testimony of John D. Schell, Jr. and David L. Talbott, AT&T Ex. 6 at 91-96; See Direct Testimony of James C. Falvey, Xspedius Ex. 1 at 3-13; See Direct Testimony of Douglas Nelson, KMC Coalition Ex. 1 at 18-20.

<sup>109</sup> See Direct Testimony of Dennis L. Ricca, MCI Ex. 23 at 19-21.

<sup>110</sup> See Direct Testimony of Thomas Mark Neinast, SBC Texas Ex. 28 at 37-38.

<sup>111</sup> See *Id.* at 38.

<sup>112</sup> See 47 C.F.R. § 51.709(b).

negotiate to have a mid-span fiber meet, the parties shall also negotiate the cost of transport for two-way trunking.

In Docket Nos. 21791 and 22315, the Commission previously decided that two-way trunking architecture is the appropriate architecture. Two-way trunking is the most efficient method of trunking for the network to minimize the impact on tandem and end office trunk port capacity for both Parties.<sup>113</sup>

***Removal of Excessive Bridge Tap (DPL Issue No. 1)***

The CLECs contended that they are entitled to have SBC Texas remove all bridged tap. However, the Commission finds that the default conditioning option for the removal of bridged tap should be limited to “excessive” bridged tap only. By doing so, SBC Texas fulfills its obligation to provide a DSL-capable loop while allowing the removal all bridged tap during the maintenance process as an option.<sup>114</sup> The Commission agrees with SBC Texas that bridged tap serves as an important element of the network and the default option should not automatically involve the unnecessary removal of all bridged tap.<sup>115</sup> Furthermore, the Commission finds SBC Texas’s proposed language to be consistent with industry standards.<sup>116</sup>

The Commission also finds that SBC Texas’s language is consistent with FCC rules and prior Commission decisions in Docket Nos. 20226 and 20272. The applicable FCC rule defines “line conditioning” as:

the removal from a copper loop or copper subloop of any device that could diminish the capability of the loop or subloop to deliver high-speed switched wireline telecommunications capability, including digital subscriber line service. Such devices include, but are not limited to, bridged taps, load coils, low pass filters, and range extenders.<sup>117</sup>

In Docket Nos. 20226 and 20272 the Arbitrators determined:

A 2-wire xDSL loop (xDSL Loop) for purposes of this section, is a loop that supports the transmission of Digital Subscriber Line (DSL) technologies. The

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<sup>113</sup> Direct Testimony of Thomas Mark Neinast, SBC Texas Ex. 28 at 41-42.

<sup>114</sup> Direct Testimony of Carol Chapman, SBC Texas Ex. 6 at 13-16.

<sup>115</sup> *Id.* at 12-17.

<sup>116</sup> Rebuttal Testimony of Carol Chapman, SBC Texas Ex. 7 at 3.

<sup>117</sup> See 47 C.F.R. § 51.319(a)(1)(iii)(A).



loop is a dedicated transmission facility between a distribution frame, or its equivalent, in a SWBT central office and the network interface device at the customer premises. A copper loop used for such purposes will meet basic electrical standards such as metallic conductivity and capacitive and resistive balance, and will not include load coils or excessive bridged tap.<sup>118</sup>

The CLEC Coalition failed to provide sufficient evidence that would warrant a reversal on such prior Commission decisions. Accordingly, the Commission adopts SBC Texas's proposed language.

### **Reciprocal Compensation**

#### ***Dedicated Transport (DPL Issue Nos. 12 and 13)***

The Commission defers this issue to Track 2 of this proceeding. Deferring this issue to Track 2 will allow the Commission and the parties to consider any impact on the present issues from the FCC's decision regarding the availability of entrance facilities as UNEs. In the interim, reciprocal compensation will continue to apply to the usage sensitive components of the network (tandem switching, common transport related to tandem switching and end office switching).

#### ***Tandem Switching Rate (DPL Issue No. 15)***

The Commission finds that a CLEC employing a multiple-function switch is not entitled to the full tandem interconnection rate on every call terminated on its switch. The FCC's tandem rate rule requires a CLEC to demonstrate that it serves a geographic area comparable to the area served by an ILEC tandem before the CLEC may charge the full tandem interconnection rate.<sup>119</sup> The evidence presented by AT&T, MCI, and the CLEC Coalition failed to show that they should receive the full tandem interconnection rate on every call terminated. The Commission further finds that a CLEC employing a multiple function switch is adequately compensated by applying the blended transport rates as determined in Docket No. 21982. Moreover, the Commission agrees with the CLEC Joint Petitioners that it is appropriate to continue to apply the method for

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<sup>118</sup> *Petition of Rhythms Links, Inc. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company and Petition of Dieca Communications, Inc., d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company*, Consolidated Docket Nos. 20226 and 20272, Arbitration Award at 11 (Nov. 30, 1999).

<sup>119</sup> *Local Competition Order* at para. 1090.

determining the tandem interconnection rate currently in the T2A.<sup>120</sup> Therefore, the Commission readopts the blended tandem rate and the 3 to 1 traffic threshold rationale for calls terminated on a multifunction switch specified in Docket No. 21982.<sup>121</sup> Additionally, the Commission rejects the LATA-by-LATA test proposed by SBC Texas<sup>122</sup> because of its arbitrary nature and inconsistency with the method adopted by the Commission in Docket No. 21982.

***Provision of Transit Services at TELRIC Rates (DPL Issue No. 17)***

Consistent with prior Commission decisions in the Mega-Arbitrations, Docket No. 21982 and the predecessor T2A agreement, the Commission finds that SBC Texas shall provide transit services at TELRIC rates. The Commission notes that there has been no change in law or FCC policy to warrant a departure from prior Commission decisions on transit service. Furthermore, a federal court found that a state commission may require an ILEC to provide transiting to CLECs under state law.<sup>123</sup> Given SBC Texas's ubiquitous network in Texas and the evidence regarding absence of alternative competitive transit providers in Texas,<sup>124</sup> the Commission concludes that requiring SBC Texas to provide transit services at cost-based rates will promote interconnection of all telecommunications networks. In the absence of alternative transit providers in Texas, the Commission finds that SBC Texas's proposal<sup>125</sup> to negotiate transit services separately outside the scope of an FTA § 251/252 negotiation may result in cost-prohibitive rates for transit service. The Commission also notes SBC Texas's concerns regarding billing disputes related to transit traffic and reaffirms its decision in Docket No. 21982 that terminating carriers must directly bill third parties that originate calls and send traffic over SBC Texas's network.<sup>126</sup>

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<sup>120</sup> Direct Testimony of Charles D. Land (Attachment 12: Compensation), CLEC Joint Petitioners Ex. 1 at 12-15.

<sup>121</sup> Docket No. 21982, Revised Award at 52-53 (Nov. 15, 2000).

<sup>122</sup> Direct Testimony of J. Scott McPhee, SBC Texas Ex. 24 at 19.

<sup>123</sup> *Michigan Bell Tel. Co. v. Chappelle*, 222 F. Supp. 2d 905, 918 (E.D. Mich. 2002).

<sup>124</sup> Tr. at 252-253 (Sept. 22, 2004).

<sup>125</sup> Direct Testimony of J. Scott McPhee, SBC Texas Ex. 24 at 84.

<sup>126</sup> Docket No. 21982, Revised Arbitration Award at 64 (Aug. 31, 2000).

***Retention of Bill and Keep for Certain Services in Birch/ionex-SBC Texas contract (DPL Issue No. 34)***

The Commission finds no compelling reason to expand the application of bill and keep as requested by Birch/ionex. The FCC's rules specify when a state commission may impose bill and keep as a form of reciprocal compensation (which only applies to 251(b)(5) traffic).<sup>127</sup> Furthermore, the *ISP Remand Order* provides for bill and keep for ISP-bound traffic in certain circumstances (e.g., when a state commission has not required compensation for ISP-bound traffic).<sup>128</sup> In addition, this Award applies bill and keep to FX voice-traffic to be consistent with the treatment of FX ISP-bound traffic and avoid complications from treating voice traffic differently than ISP-bound traffic. However, expanding bill and keep as requested by Birch/ionex would exceed the scope of bill and keep currently provided for by the FCC and this Commission. The Commission notes that SBC Texas's proposed long term bill and keep, as amended by the Commission in DPL Issue 34, is reasonable because it limits the application of bill and keep to 251(b)(5) traffic and ISP-bound traffic within a local calling area subject to certain conditions, and it comports with FCC rules and prior Commission decisions.

The Commission declines to adopt Birch/ionex's proposal to expand bill and keep to other types of traffic, such as optional EAS and toll traffic.<sup>129</sup> The Commission notes that the existing Birch/ionex agreement applying bill and keep to local traffic and other types of traffic resulted from the adoption of a previously negotiated SBC Texas/Sage reciprocal compensation attachment.<sup>130</sup> Birch/ionex have not provided sufficient justification to warrant a departure from prior Commission decisions regarding bill and keep or to require SBC Texas to perpetuate an expired negotiated provision. Nevertheless, nothing precludes the parties from voluntarily agreeing to rate a structure other than that adopted in this Award.

***Bill and Keep Thresholds (DPL Issue 34)***

The Commission finds it is appropriate to apply traffic balance thresholds for carriers that enter into a long-term bill and keep option for reciprocal compensation. The Commission finds

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<sup>127</sup> See 47 C.F.R. § 51.713.

<sup>128</sup> *ISP Remand Order* at para. 80.

<sup>129</sup> Rebuttal Testimony of John M. Ivanuska, Birch/ionex Ex. 2 at 30-32.

<sup>130</sup> Direct Testimony of John M. Ivanuska, Birch/ionex Ex. 1 at 26.

the threshold SBC Texas has proposed, where traffic is considered to be out-of-balance when the amount of traffic exchanged between the parties exceeds +/-5% away from equilibrium for three consecutive months, is reasonable and is comparable with the thresholds contained in the current ICA.<sup>131</sup> The Commission finds that the out-of-balance threshold of +/-15% proposed by the CLEC Coalition would not ensure that traffic is roughly in balance, as required by the FCC.<sup>132</sup> A 15% out-of-balance threshold would result in a significant difference in traffic amounts in cases when there is a large amount of traffic exchanged between the two carriers and the traffic patterns are consistently close to the threshold. The Commission declines to adopt SBC Texas's proposal for an additional threshold based on the difference in minutes of use (MOU) between the carriers. The Commission finds there is no precedent for the MOU threshold nor has SBC Texas adequately explained the rationale for choosing 750,000 MOU as the specific threshold.

***Mirrored vs. Non-Mirrored Rates (DPL Issue No. 34)***

The Commission finds it is not appropriate for SBC Texas to offer CLECs different rates for compensation of Section 251(b)(5) traffic and ISP-bound traffic. The only appropriate compensation option set forth by SBC Texas is the exchange of all Section 251(b)(5) and ISP-bound traffic at the same FCC *ISP Remand Order* rate of \$0.0007. Having different compensation rates for ISP-bound traffic and 251(b)(5) traffic does not comply with the "mirroring rule" in the FCC's *ISP Remand Order* which "ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic".<sup>133</sup> SBC Texas's proposal would have SBC Texas, as an ILEC, paying a *lower* rate for ISP-bound traffic, where it is a net payor, and receiving a *higher* rate for 251(b)(5) traffic when it is being paid. The FCC was concerned with this exact outcome when it stated in its Order:

"It would be as unwise a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic, with respect to which they are net payors, while permitting them to exchange traffic at state reciprocal compensation rates, which are much higher than the caps we adopt here, when the traffic imbalance is reversed."<sup>134</sup>

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<sup>131</sup> T2A Interconnection Agreement, Appendix 12A Sec. 1.6.1.

<sup>132</sup> *Local Competition Order* at para. 1112.

<sup>133</sup> *ISP Remand Order* at para. 89.

<sup>134</sup> *ISP Remand Order* at para. 89.

Consistent with the mirroring rule, the incumbent LECs must pay the same rate for ISP-bound traffic that they receive for section 251(b)(5) traffic.

***Bifurcated End-Office Switching Rate (DPL Issue No. 64)***

The Commission finds that the bifurcated end-office switching rate structure<sup>135</sup> adopted in Docket No. 21982 still applies. The Commission agrees with SBC Texas that the bifurcated rate “continues to be the most accurate measurement for determining costs incurred by each party’s end-office call termination functions.”<sup>136</sup> The Commission disagrees with the CLEC Coalition’s argument that the “[a]pplication of the bifurcated rate is not appropriate under the ISP Remand Order’s interim regime.”<sup>137</sup> The bifurcated rate structure was established to address concerns regarding the overcompensation of long-duration calls, not exclusively ISP-bound calls as the CLEC Coalition argues. The bifurcated rate structure more accurately accounts for the structure of the costs incurred in both the call set-up and duration components of a call.

***Compensation for FX Traffic (DPL Issue No. 11)***

The Commission finds bill and keep to be the appropriate method of inter-carrier compensation for voice FX traffic. The Commission notes that it recently ruled that bill and keep is the appropriate method of inter-carrier compensation for ISP-bound FX traffic in Docket No. 24015.<sup>138</sup> Therefore, a bill and keep inter-carrier compensation scheme for voice FX-traffic in this proceeding will create a consistent inter-carrier compensation method for both FX-ISP and FX-voice traffic.

***Segregation of FX-Traffic (DPL Issue No. 28)***

The Commission notes that SBC Texas proposed two alternative methods for segregation FX traffic: (1) adoption of a Percentage of FX (PFX) Usage factor, and (2) the use of ten (10) digit screening. However, the Commission finds that the use of ten-digit screening to track FX-like traffic at this time could prove to be uneconomical, considering that a 10-digit screening requirement may become unnecessary because of future inter-carrier compensation

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<sup>135</sup> Docket No. 21982, Revised Arbitration Award at 52 (Aug. 31, 2000).

<sup>136</sup> Direct Testimony of J. Scott McPhee, SBC Texas Ex. 24 at 33.

<sup>137</sup> Direct Testimony of James C. Falvey, CLEC Coalition Ex. 3 at 11.

<sup>138</sup> Docket No. 24015, Order on Clarification (Jan. 5, 2005).

rules that the FCC may implement. Accordingly, the Commission finds that the agreement shall not mandate the use of 10-digit screening. Instead a PFX Usage factor should apply, unless agreed otherwise.

### **General Terms and Conditions**

#### ***Changes in Provisioning (DPL Issue No. 4)***

Birch/ionex argued that the ICA should contain language that would prevent SBC Texas from making unilateral changes in policy, process, method, or procedure used to perform its obligations under the ICA that causes operational disruption or modification without first providing advance notice to Birch/ionex and having Birch/ionex agree to the modification.<sup>139</sup> Birch/ionex stated that based on several business experiences over the past three years under the existing ICA, SBC Texas made “policy” or “process” modifications unilaterally without notice to Birch, thereby materially and detrimentally affecting Birch’s ability to obtain certain UNEs and services.<sup>140</sup>

The Commission concludes that SBC Texas shall give a 45-day notice to Birch/ionex prior to making any unilateral changes in policy, process, method, or procedure that SBC Texas uses to perform its obligations under the ICA that would cause operational disruption or modification unless the implementation of such change or discontinuance of such policy, process, procedure or method is beyond the control of SBC Texas. The Commission finds that the 45-day notice provides sufficient time for Birch/ionex to implement any changes in its computer systems and operational procedures. The Commission further determines that it is not reasonable for Birch/ionex to effectively have veto power over SBC Texas’s changes in policy, process, method, or procedures.

#### ***Disconnection for Non-Payment (DPL Issue No. 39)***

The Commission finds that given the instability in the telecommunications industry, it is reasonable to allow SBC Texas to have non-payment and disconnection language included in the ICA. It is reasonable and accepted business practice to issue final notices to a non-paying party

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<sup>139</sup> Direct Testimony of John M. Ivanuska, Birch/ionex Ex. 1 at 12-13.

<sup>140</sup> Direct Testimony of John M. Ivanuska, Birch/ionex Ex. 1 at 13-16.

and furthermore, to disconnect services provided if payment of an invoice is not forthcoming in a specified period of time. This position takes into account the concerns of both SBC Texas, which argued that the ICA should include nonpayment and disconnection language as well as SBC Texas's language regarding terms and conditions that apply in the event a billed party does not pay or dispute its monthly charges,<sup>141</sup> and that of AT&T, which argued in part that SBC Texas should not have the right to disconnect any service being provided to AT&T unless written notice of the termination is given to both AT&T and the Commission and the Commission expressly approves such disconnection.

The Commission finds that a more reasonable time frame for payment of the first and second past-due notices would be 15 calendar days for each notice. Additionally, in order to provide a higher level of protection for the resale end-user, SBC Texas shall send the Commission a list of all resale end-users to whom SBC Texas sends a 30-day notice informing them of the need to designate a new provider. This will allow the Commission to address any potential disruption in service to the consumers before any such disruption could occur. The Commission further determines that in order to avoid having a non-paying party shift customers from one platform to another (i.e., changing customers from UNE to resale) to avoid paying certain charges, SBC Texas shall disconnect the billed account number and not just the individual service for which payment is past-due.

***Deposits (DPL Issue No. 35)***

The Commission finds that it is reasonable to allow SBC Texas to request a deposit from a new entrant that: has no previous credit history; has no previous credit history and is affiliated with a company that may have good payment history but has an impairment of credit; or a billed party that has established a poor payment history. The Commission concurs that the purpose of requiring a deposit is to protect SBC Texas against losses it incurred when providing services to a party that fails to pay undisputed charges.<sup>142</sup> SBC Texas's proposed deposit provision reasonably guards against risk of loss from nonpayment of undisputed bills. The Commission

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<sup>141</sup> Rebuttal Testimony of David J. Egan, SBC Texas Ex. 15 at 18-19.

<sup>142</sup> Direct Testimony of David J. Egan, SBC Texas Ex. 14 at 8-9.

disagrees with MCIIm's proposed language which would permit a party to charge a deposit based on the other party's failure to make timely payments under the ICA.<sup>143</sup>

The Commission also concurs with SBC Texas that impairment of credit of the new entrant's affiliate will be determined from information available from financial information providers that the billed-party affiliate has not maintained Standard and Poor's long term debt rating of BBB or better or a short term debt rating of A-2 or better for the prior six months.<sup>144</sup>

Accordingly, the deposit shall be the greater of: 1) an amount equal to three (3) months anticipated charges (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), as reasonably determined by SBC Texas, for the Interconnection, Resale Services, Network Elements, Collocation or any other functions, facilities, products or services to be furnished by SBC Texas under this ICA; or 2) \$17,000. The Commission disagrees that SBC Texas may require a deposit from a billed party with a good payment history but who has impaired credit. Impairment of credit does not necessarily indicate future delinquency in payment, especially when the payment history shows that the billed party has continued to timely pay amounts due.

***Definition of "End-User" and "End-User Customer" (DPL Issue No. 2)***

The Commission finds that the ICA should include a definition of "End User" or "End User Customer." This is consistent with the Commission's decisions in Docket No. 25188 in which the Commission declined to globally replace the term "end user" with the term "customer" in an ICA.<sup>145</sup> The Revised Award in Docket No. 25188 stated that "the term 'customer' cannot be substituted for 'end user.'"<sup>146</sup> Subsequently, the Commission affirmed that "[t]he Revised Award appropriately determined that the term 'customer' cannot be substituted for the term 'end user,' particularly with respect to UNE loops, network interface devices (NID) and enhanced

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<sup>143</sup> See Direct Testimony of Earl Hurter, MCIIm Ex. 4 at 8-14.

<sup>144</sup> Direct Testimony of David J. Egan, SBC Texas Ex. 14 at 14; Rebuttal Testimony of David J. Egan, SBC Texas Ex. 15 at 10.

<sup>145</sup> *Petition of El Paso Networks, LLC, for Arbitration of an Interconnection Agreement with Southwestern Bell Telephone Company under the Telecommunications Act of 1996*, Docket No. 25188, Order Approving Revised Arbitration Award and Interconnection Agreement at 2 (Aug. 31, 2004).

<sup>146</sup> Docket No. 25188, Revised Arbitration Award at 15 (July 29, 2002).



extended loops (EEL).”<sup>147</sup> The Commission found that the term “end user” is essential in defining the network element known as the local loop (or loop) defined by 47 C.F.R. § 51.319(a)(1) as “the transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point, at an end user premises, including inside wire owned by the incumbent LEC.” The use of the term “end user” is critical for distinguishing UNE loops from other UNEs and other network elements that provide transmission paths between end points not associated with end users, such as interoffice transport. In addition, the FCC’s *Supplemental Order Clarification* specifically used the term “end user” in defining the local use requirements for obtaining EELs.<sup>148</sup> However, nothing prohibits an IXC, CAP or CMRS provider or other carrier from being an end-user to the extent that such carrier is the ultimate retail consumer of the service (e.g., a CLEC provides local exchange service to an IXC at its administrative offices). In other words, a carrier is an end user when actually consuming the retail service, as opposed to using the service as an input to another communications service.

### **Performance Measures**

#### ***Number of Measures and Associated Business Rules (DPL Issue Nos. 1-4)***

The Commission concurs with the parties’ nearly unanimous position that the current measures—87 measures with 2,482 disaggregations—are cumbersome and warrant significant reduction. The CLECs initially proposed geographic consolidation from four regional disaggregations per measure to a single, cumulative, statewide aggregate per measure, thereby reducing SBC Texas’s reporting burden by 75%.<sup>149</sup> However, since the hearing, parties have engaged in collaborative meetings and have agreed to 35 measures with approximately 300 disaggregations. The Commission finds that the proposed Business Rules, Version 4.0, filed January 4, 2005, adequately measures all aspects of SBC Texas’s wholesale business operations on which CLECs rely, even though the measures are significantly reduced compared with

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<sup>147</sup> Docket No. 25188, Order Approving Revised Arbitration Award and Interconnection Agreement at 2 (Aug. 31, 2004).

<sup>148</sup> See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, FCC 00-183 at para. 22 (June 2, 2000) (*Supplemental Order Clarification*).

<sup>149</sup> Tr. at 554-555 and 637-639 (Sept. 23, 2004).

Version 3.0. Thus, the Commission adopts the parties' negotiated performance measures and associated Business Rules, Version 4.0.

***Remedy Plan (DPL Issue Nos. 1 and 2)***

The Commission finds that a performance remedy plan is essential to the successful implementation of performance measures. In particular, as outlined in the Order Addressing Threshold Issues<sup>150</sup> in this docket, the Commission finds that it has the authority under FTA §§ 251 and 252 to arbitrate a self-executing performance remedy plan. At the time of the hearing, parties had several substantive issues ready for Commission decision including statistics methodologies, caps on liquidated damages, and clarification surrounding the audit contract language, to name a few. However, since that time, parties have engaged in collaborative meetings, settling many of these issues. As of the January 27, 2005, Open Meeting, parties had not reached agreement on threshold issues relating to the remedy plan, nor had parties filed an updated decision point list specific to the remedy plan. Therefore, the Commission finds that the remedy plan issues shall be addressed in Track 2 of this docket along with the other UNE related issues.

**Resale**

***Suspend/restore (DPL Resale Issue No. 17)***

CLEC Joint Petitioners argued that they actually use unbundled network provisioning functions when submitting electronic service orders for suspension/restoral service on behalf of their resale end-user customers and that SBC Texas does not provide any service.<sup>151</sup> CLEC Joint Petitioners asserted that there were only two kinds of suspension/restoral orders in the retail tariff: (1) retail customer initiated orders, also known as vacation service, and (2) SBC Texas initiated orders used as a collection tool. In addition, CLEC Joint Petitioners asserted that there were no tariff provisions for "CLEC-initiated" suspension/restoral orders.<sup>152</sup> Consequently, CLEC Joint Petitioners argue that for suspension/restoral, SBC Texas should only charge a total

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<sup>150</sup> Order Addressing Threshold Issues (Apr. 16, 2004).

<sup>151</sup> Rebuttal Testimony of Kit Morris, CLEC Joint Petitioners Ex. 4 at 16-17.

<sup>152</sup> Rebuttal Testimony of Kit Morris, CLEC Joint Petitioners Ex. 4 at 16.

of \$2.56 (the UNE rate for electronically submitting service orders).<sup>153</sup> Moreover, CLEC Joint Petitioners claimed that SBC Texas performed no function, task or service for the \$25 retail tariff rate for suspension/restoral service.<sup>154</sup> CLEC Joint Petitioners proposed contract language that would expressly prohibit SBC Texas from charging the \$25 retail tariff rate for suspension/restoral service. CLEC Joint Petitioners also argued that the Commission had already heard and decided this issue in their favor in Docket No. 24547.

SBC Texas claimed that suspension/restoral service fundamentally differed from the processing of a service order.<sup>155</sup> SBC Texas distinguished between the operations support systems (OSS) gateway (which creates orders) and the service itself.<sup>156</sup> SBC Texas contended that just because a service is provided seamlessly in response to a service order does not mean that the underlying service becomes a part of the OSS function. SBC Texas stated that suspension/restoral service was a valuable service that CLECs used to assist in collection.<sup>157</sup>

The Commission finds that the TELRIC-based charge for the electronic processing of “resale service orders” and the application of the avoided-cost discount to underlying resold telecommunications services, such as suspension and restoral service, are distinctly separate matters and must be compensated according to applicable FCC rules and regulations. While prior Commission decisions have addressed these matters, pricing for “resold telecommunications services” and electronic “resale service orders” require further clarification. Consistent with the decision in Docket No. 24547, the Commission finds that TELRIC-based charges continue to apply to electronically-processed service orders for resold telecommunications services (as opposed to tariff service order charge(s) less the avoided-cost discount). This, however, does not mean that TELRIC-based charges apply to the underlying, resold telecommunications services themselves. Instead, the avoided-cost discount applies to all resold telecommunications services in SBC Texas’s retail tariff.

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<sup>153</sup> Direct Testimony of Terry McBride, CLEC Joint Petitioners Ex. 5 at 17.

<sup>154</sup> Direct Testimony of Terry McBride, CLEC Joint Petitioners Ex. 5 at 16; Direct Testimony of Kit Morris, CLEC Joint Petitioners Ex. 3 at 23-24.

<sup>155</sup> Open Meeting Tr. at 678-679 (Nov. 10, 2004).

<sup>156</sup> Open Meeting Tr. at 676, 682 and 701 (Nov. 10, 2004).

<sup>157</sup> Open Meeting Tr. at 679-680 (Nov. 10, 2004).

Although SBC Texas's tariff contains no explicit provision for "CLEC-initiated" suspension/restoral service, the same could be said of all resold services obtained from SBC Texas's retail tariffs. SBC Texas's retail tariffs describe retail services originally offered only to retail customers and consequently do not contain specific language regarding resale by CLECs. Nevertheless, these same retail services have subsequently become available for resale. The fact that these tariffs do not contain any provisions related to "CLEC-initiated" suspension/restoral service is irrelevant. In addition to setting forth the specific rates, terms and conditions of the telecommunications services that SBC Texas provides to its retail customers, SBC Texas's retail tariffs identify the telecommunications service that SBC Texas must make available for resale at wholesale rates pursuant to § 251(c)(4) of the FTA. The Commission finds that suspension/restoral service in SBC Texas's retail tariff is a telecommunications service which must be made available for resale to CLECs. Suspension/restoral service provides a valuable function by circumventing the complications of disconnection and reconnection. If SBC Texas's tariff did not include suspension/restoral service, the CLEC Joint Petitioners' may have a more persuasive argument that SBC Texas should not charge for such service. On the other hand, if SBC Texas's tariff did not include suspension/restoral service, CLECs could not obtain it for resale.

In the Docket No. 24547, the Commission specifically found that \$2.58 is the appropriate charge "for the processing of electronic orders of resold services" for new and suspended customers, as opposed to the application of an avoided cost discount to the service order charges found in SBC Texas's retail tariff.<sup>158</sup> The Commission reaffirms this prior conclusion. Moreover, the *AccuTel Arbitration Award* did not preclude SBC Texas from charging for the suspension and restoral service found in Section 31 of its Texas General Exchange Tariff. Suspension and restoral service, like other telecommunications services found in SBC Texas's retail tariff, continues to be available for resale at the 21.6% avoided-cost discount. Pursuant to the FCC's *Local Competition Order*,<sup>159</sup> this Commission finds that the avoided-cost discount applies to suspension and restoral service because it is integral to telecommunications service

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<sup>158</sup> *Petition of AccuTel Texas, Inc. dba 1-800-FOR-A-PHONE and Southwestern Bell Telephone Company for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act of 1934*, Docket No. 24547, Arbitration Award at 14 (Jan. 25, 2002) (*AccuTel Arbitration Award*).

<sup>159</sup> *Local Competition Order* at paras. 871 and 872.

(for instance, suspension allows continued access to 911 service, which P.U.C. SUBST. R. 26.5(11) defines as a basic local telecommunications service).

The Commission also finds that the 21.6% avoided-cost discount for resold telecommunications services embodies the wholesale rate at which SBC Texas must offer suspension/restoral services for resale. The fact that electronically-submitted ordering of suspension/restoral service constitutes an OSS function that flows through electronically has no bearing on the rate for the suspension/restoral service itself. The Commission-prescribed avoided-cost discount applies to all of SBC Texas's retail telecommunications services, regardless of whether such services require additional functions or activities on the part of SBC Texas, or whether such services are priced above or below costs. Since the Commission's non-service-specific avoided-cost discount applies indiscriminately to all of SBC Texas's retail telecommunications services, SBC Texas will inevitably either over recover or under recover its costs for any given service, regardless of any function, service or task that SBC Texas may or may not perform in relation to the service.

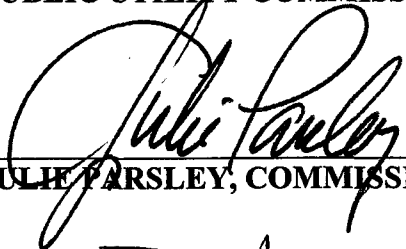
The Commission further finds that since the terms of SBC Texas's retail tariff only provide for a charge for the suspension/restoral service itself, and does not include a separate service order charge for suspension/restoral service, a service order charge does not apply to orders for suspension/restoral service. Accordingly, suspension/restoral service shall be made available for resale to CLECs at the retail tariff rate for such service less the avoided-cost discount of 21.6%, without any associated service order charge.

## V. CONCLUSION

The Arbitrators conclude that the decisions outlined in the Award and the Award matrix, as well as the conditions imposed on the parties by these decisions, meet the requirements of FTA §§ 251 and 252 and any applicable regulations prescribed by the FCC pursuant to FTA §§ 251 and 252.

SIGNED AT AUSTIN, TEXAS the 22nd day of February 2005.

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
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**JULIE PARSLEY, COMMISSIONER**

  
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**PAUL HUDSON, CHAIRMAN**

  
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**BARRY T. SMITHERMAN, COMMISSIONER**

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# DOCKET 28821 – PERFORMANCE MEASURES – Business Rules

SBC Issue #	CLEC Name and Issue #	SBC Overarching Issue Statement CLEC Specific Issue	PM Number	COMMISSION DECISION
1	CLEC #11	What is the appropriate benchmark for “DS1 and above (DS1, OCn and Dark Fiber) Loops and Transport” in PM 39?	39	The Commission finds 4.5 hours (critical z does not apply) to be the appropriate benchmark for “DS1 and above (DS1, OCn and Dark Fiber) Loops and Transport” in PM 39. Based on SBC’s provided data, 4.5 hours is both an attainable benchmark that SBC has met 8 out of the last 12 months as well as a benchmark that provides CLECs nondiscriminatory service at parity with SBC retail. Given that geographic consolidation and consolidation of “dispatch” and “non-dispatch” trouble tickets are both new practices for PMs, the Commission finds that the available data and information do not support a benchmark of 4.0 hours as the CLECs suggest. However, the Commission notes that the next annual review will provide a forum to reevaluate the suitability of all benchmarks.
2	CLEC #12	What is the appropriate benchmark for EELs in PM 39?	39	The Commission finds that 4.5 hours (critical z does not apply) is the appropriate benchmark for EELs in PM 39. The Commission supports the CLEC position that SBC should provide the same level of service for DS-1 EELs as for DS-1 loops. Moreover, the data provided by SBC indicates that a firm benchmark of 4.5 hours is attainable. SBC has met 4.5 hour standard 8 out of the last 10 months. As above, the next annual review provides for an opportunity to reevaluate all performance benchmarks.
3	CLEC #13	What is the appropriate benchmark for “DS1 and above (DS1, OCn and Dark Fiber) Loops and Transport” in PM 41?	41	The Commission finds that 15%, 10% in 6 months (critical z does not apply) is the appropriate benchmark for “DS1 and above (DS1, OCn and Dark Fiber) Loops and Transport” in PM 41. The Commission concurs with the CLEC position that SBC’s repeat rate needs significant improvement. Based on SBC’s provided data, the 15% benchmark has been met 8 out of the last 12 months, and is thus an attainable starting point. Furthermore, the ramp time frame of 6 months provides SBC with an opportunity to make necessary changes to their repair operations to meet the new 10% standard. As above, this benchmark can be reconsidered at the next annual review.
4	CLEC #14	What is the appropriate benchmark for EELs in PM 41?	41	The Commission finds that 15%, 10% in 6 months (critical z does not apply) is the appropriate benchmark for EELs in PM 41. The Commission concurs with the CLEC position that SBC’s repeat rate needs significant improvement, and that SBC should provide the same level of service for EELs as for loops. Based on SBC’s provided data, the 15% benchmark has been met 4 out of the last 10 months, and is thus an attainable starting point. Furthermore, the ramp time frame of 6 months provides SBC with an opportunity to make necessary changes to their repair operations to meet the new 10% standard. As above, this benchmark can be reconsidered at the next annual review.

**28821-Comprehensive Billing-Jt. DPL-Final**

SBC Issue #	CLEC Name and Issue #	SBC Overarching Issue Statement CLEC Specific Issue Statement	Attachment & Sections	COMMISSION DECISION
1	[CJP]	Should the interconnection agreement address the billing for non 251(h) and (c) products and services that are not provided under this agreement?		SETTLED.
3	[AT&T] 1 [[CJP] adopted the position of AT&T	[SBC] Which Party should bear the costs of separating out bills into categories and distributing those subset bills within AT&T's organization?  [AT&T] Should the Billed Party have the discretion to designate a changed billing address for different categories of bills upon 30 days written notice to the Billing Party?	Attachment 28 2.1.3	The Commission finds that SBC Texas should not bear the costs of separating out bills into categories and distributing the subset of bills to different addresses designated by the CLEC. Monthly bills to CLECs are already delivered to the location that each CLEC provided to SBC Texas. The Access Customer Name Abbreviation (ACNA) is a three digit code assigned to carriers for, among other things, billing and bill verification. (Smith Direct at 47, SBC-TX Ex. 44C) In CABS billing, the ACNA has associated Billing Account Numbers (BANs) that correlate to class of service that may be purchased by the CLEC. (Smith Direct at 47, SBC-TX Ex. 44C) Separate ACNA codes are not assigned for different functions of a CLEC. (Smith Direct at 49, SBC-TX Ex. 44C) The Commission finds that the CLECs provided no convincing testimony to justify the need to modify the existing billing system. In the end, the Commission believes that the CLECs are in the best position to distribute different categories of the bill to the appropriate sub-location. Requiring SBC Texas to do work best suited for CLECs would not lend itself to efficiency.  The Commission declines to adopt any contract language as proposed by SBC Texas.
4	[CJP] 2	[SBC] Should SBC Texas be required to establish a special bill payment cycle for CJP that is different from the other CLECs?  [CJP] Should bill delivery and payment policies provide for additional days to account for the greater extensiveness of carrier bills?	Attach. 28, § 3.1	The Commission finds that SBC Texas bill payment and delivery policies should not be adjusted to allow for additional days to account for the greater extensiveness of carrier bills. CJP pointed to the increasing complexity of the bills and billing process as justification for additional time to pay bills it received from SBC Texas. However, the Commission finds that SBC Texas provides adequate and timely opportunities for CLECs to receive and pay bills. For one, SBC Texas offers electronic distribution of bills through EDI which provides for timely receipt of bills by CLECs. Second, SBC CLECs may pay their bills via the Automated Clearinghouse Method of electronic bill payment which provides for

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				timely crediting of payments. CLECs are also afforded the opportunity to choose the date on which SBC Texas will bill them. (Quate Rebuttal at 10, SBC-TX Ex. 36)  The Commission adopts the contract language proposed by SBC Texas.
5	[CJP] 3	[SBC] Should SBC Texas be required to establish a special bill payment cycle for CJP that is different from the other CLECs?  [CJP] Should bill delivery and payment policies provide for additional days to account for the greater extensiveness of carrier bills?	Attach. 28, § 4.3.1	Consistent with the decision reached in Issue No. 4 above, the Commission finds that bill delivery and payment policies should not be altered to provide for additional days to account for the greater extensiveness of carrier bills.  The Commission adopts the contract language proposed by SBC Texas.
6	[CJP] 4	[SBC] Should SBC Texas be required to establish a special bill payment cycle for CJP that is different from the other CLECs?  [CJP] Should bill delivery and payment policies provide for additional days to account for the greater extensiveness of carrier bills?	Attach. 28, § 4.4	Consistent with the decision reached in Issue No. 4 above, the Commission finds that bill delivery and payment policies should not be altered to provide for additional days to account for the greater extensiveness of carrier bills.  The Commission adopts the contract language proposed by SBC Texas.
7	[AT&T] 5 [CJP] adopted the position of AT&T	[AT&T] Should the Agreement include Attachment 24: Recording?  [CJP] Should the Agreement include Attachment 24: Recording?	[AT&T] Attach 28 9.0, 9.1, 9.2, 9.3, 9.5, 9.6, 9.6.1, 9.7, 9.8, 9.8.1, 9.8.2, and 9.9  [CJP] 9.2.1, 9.8 and  Attach. 24: Recording	The Commission finds that the Agreement should include Attachment 24: Recording. AT&T explained in written testimony that the Multiple Exchange Carrier Access Billing (MECAB) guidelines for Meet Point Billing (MPB) were substantially changed by the OBF. AT&T also claimed that Attachment 24: Recording was not updated to reflect the new MECAB guidelines. (Fetting Direct 11-12, AT&T Ex. 2) In fact, SWB Texas testified that the Recording Attachment is up to date with current industry processes as outlined by the latest MECAB guidelines. (Read Rebuttal at 2, SBC-TX Ex. 38)  The Commission finds that the Attachment should be included in the Agreement given its consistency with the current OBF guidelines relating to MECAB.  The Commission adopts the contract language proposed by SBC Texas.

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SBC Issue #	CLEC Name and Issue #	SBC Overarching Issue Statement CLEC Specific Issue Statement	Attachment & Sections	COMMISSION DECISION
8	[AT&T] 2 [CJP] adopted the position of AT&T	[AT&T] a. Must SBC provide the OCN of an originating carrier to AT&T operating as a facilities based carrier, when the originating carrier is utilizing SBC's switch on an unbundled basis?  b. If so, must it be provided by a report or may it be provided via the call detail record?	[At&T] Attachment 28 10.3  [CJP] 10.3	The Commission finds that SBC Texas already provides CLECs with the Operating Company Numbers (OCNs) of the originating carriers through a mechanized process which is consistent with industry standard and satisfies the CLEC information needs. SBC Texas uses a mechanized process to provide the OCN of an originating carrier utilizing SBC Texas' switch to originate traffic. (Read Direct at 6, SBC-TX Ex. 37C) The mechanized call detail records provided to CLECs are available for UNE-P and Resale originating calls. (Read Direct at 8, SBC-TX Ex. 37C) The Commission also finds that the CLEC's proposed contract language would require SBC Texas to manually prepare and provide a new report supplying the OCN information. This is the same information that is already provided by a mechanized process. (Read Direct at 8, SBC-TX Ex. 37C)  The Commission adopts the contract language proposed by SBC Texas.
9	[CJP] 5	[CJP] Should bill delivery and payment policies provide for additional days to account for the greater extensiveness of carrier bills?	Attach. 28, § 11.1	Consistent with the decision reached in Issue No. 4 above, the Commission finds that bill delivery and payment policies should not be altered to provide for additional days to account for the greater extensiveness of carrier bills.  The Commission adopts the contract language proposed by SBC Texas.
10	[AT&T] 3 [CJP] adopted the position of AT&T	[AT&T] a. Should SBC TEXAS be required to provide to AT&T the OCN or CIC, as appropriate, of 3 <sup>rd</sup> party originating carriers when AT&T is terminating calls as an unbundled switch user of SBC TEXAS?  b. Should SBC TEXAS be billed on a default basis when it fails to provide the 3 <sup>rd</sup> party originating carrier OCN or CIC, as appropriate, to AT&T when AT&T is terminating calls as the unbundled switch user?	Attach 28 14.4  [CJP] 14.4	The Commission finds that SBC Texas shall provide the OCN and CIC to CLECs of the originating carrier in the usage records it provides for calls originated by 3 <sup>rd</sup> party carriers when that information is available. Second, when 3 <sup>rd</sup> party originating carrier OCN or CIC is not available to SBC Texas, the Commission finds that SBC Texas should not be billed on a default basis for failing to provide information that it does not possess. (Read Direct at 13, SBC-TX Ex. 37C) The CLECs provided no compelling evidence justifying why this should be the default basis. The Commission finds no reason to hold SBC Texas responsible as being the originating carrier in those instances when it is not.  The Commission adopts the contract language proposed by SBC Texas.

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SBC Issue #	CLEC Name and Issue #	SBC Overarching Issue Statement CLEC Specific Issue Statement	Attachment & Sections	COMMISSION DECISION
12	[AT&T] 6 [CJP] adopted the position of AT&T	[AT&T] a. Should SBC be required to implement price reductions within 60 days after the effective date of a price reducing order?  b. Is AT&T entitled to interest for the period of time between the effective date of a price reducing order and SBC's implementation date?	Attach 28 2.4	<p>The Commission finds that SBC Texas should not be required to implement price reductions 60 days after the effective date of a price reducing order. Second, the Commission finds that AT&amp;T is not entitled to interest for the period of time between a price reducing order and SBC Texas' implementation date.</p> <p>The Commission finds that written notice in this instance is necessary to adequately document a party's request that a rate or price change based upon a Commission or FCC order. (Silver Direct at 33, SBC-TX Ex. 41C) The Commission finds that it is practical to require a party desiring the implementation of rate changes to inform the contract partners of that request.</p> <p>The CLECs provided no compelling testimony justifying interest being paid to CLECs on amounts overpaid as a result of a rate reduction.</p> <p>The Commission adopts the contract language proposed by SBC Texas.</p>
13	[AT&T] 7 [CJP] adopted the position of AT&T	[SBC] What information should SBC Texas provide to help CLEC validate DUF and monthly CABS bill?  [AT&T] Should SBC be required to provide process mapping of DUF call detail information to bill structure?	Attach 28 3.3.1	<p>The Commission finds that SBC Texas provides CLECs with the information necessary for them to validate their CABS bills and therefore should not be required to provide 'process mapping' of the Daily Usage File (DUF) call detail information to bill structure. The DUF is a daily delivery of call detail records and CABS bills are issued monthly. Therefore, the DUF does not easily match up with the information contained in the CABS bills. (Read Direct at 17, SBC-TX EX. 37C)</p> <p>CLECs are allowed access to an online DUF User's guide which provides information on what records can be expected in the DUF file and are also allowed access to call-flows. Call-flows identify the type of records that will be in the DUF for the call scenario and the rate elements that will be billed in CABS for that call scenario. (Read Direct at 18, SBC-TX Ex. 37C) The Commission finds that CLECs are provided with adequate tools and information to validate their bills.</p> <p>The Commission finds no persuasive evidence supporting AT&amp;T's assumption that a correlation exists between the DUF records and the</p>

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SBC Issue #	CLEC Name and Issue #	SBC Overarching Issue Statement CLEC Specific Issue Statement	Attachment & Sections	COMMISSION DECISION
				<p>UNE-P bills that SBC submits to AT&amp;T. (Fettig Direct at 23-24, AT&amp;T Ex. 2) Further, the Commission believes that any future disputes regarding this issue are best handled in the Ordering and Billing Forum.</p> <p>The Commission declines to adopt any contract language as proposed by SBC Texas.</p>

SBC Issue #	CLEC Name and Issue #	SBC Overarching Issue Statement CLEC Specific Issue Statement	Attachment & Sections	COMMISSION DECISION
1	MCIm INV 1	<p>SBC: What basis should SBC use to determine the interest rate to calculate late payment charges and/or interest on credit adjustments.</p> <p>MCI: For billing out of CRIS and RBS, should interest charges be calculated according to SBC TEXAS's retail tariff or access tariff?</p>	Appendix VII: Invoicing §§ 2.8; 4.1.1	<p>The Commission finds that SBC Texas' billing systems were designed and programmed to bill in accordance with SBC Texas tariffs. (Quate Direct at 25, SBC-TX Ex. 35) Items billed out of the CRIS System mirror the retail tariff and items billed out of the CABS System mirror the access tariff. This method helps to ensure parity between CLECs and other SBC Texas customers. (Quate Direct at 25, SBC-TX Ex. 35) The Commission finds no compelling evidence in the record supporting the use of the intrastate access tariff as the basis for calculating interest for late payments and credit adjustments for charges incurred under the Agreement and billed out of CRIS.</p>
2	MCIm INV 2	<p>[SBC] When should the Billed Party be entitled to withhold payment on a disputed amount?</p> <p>[MCI] Should the Billed Party be entitled to withhold payments on disputed amounts?</p>	Appendix VII: Invoicing §§ 3.2.1; 3.3; 7.3 (et. seq.)	<p>The Commission adopts the contract language proposed by SBC Texas.</p> <p>The Commission finds that the Billed Party should only be allowed to withhold payment when there is an obvious inaccuracy in the bill. More specifically, SBC Texas proposed the standard to determine an "obvious inaccuracy" to be if the bill for services for an account doubled from the average of the previous six months billing on that account. (Egan Direct at 27, SBC-TX Ex. 14) Allowing the Billed Party to withhold a payment without setting objective standards in place helps to guard against the potential for a Billed Party to withhold payments for illegitimate reasons. (Egan Direct at 27, SBC-TX Ex. 14).</p>
3	MCIm INV 3	Which Party's description of the applicable stake date for Reciprocal Compensation billing should be included in the Agreement?	Appendix VII: Invoicing §§ 5.3; 6.3	<p>The Commission adopts the contract language proposed by SBC Texas.</p> <p>The Commission finds that the contract language proposed by the MCIm adequately satisfies the general agreement by parties that no stake date should be established for disputes arising out of the parties' reciprocal compensation obligations. (Hurter Direct at 20-22, MCI Ex. 4) The Commission does not find that the language proposed by MCIm is overly broad and vague to the point where it may lead to future disputes. (McPhee Direct at 60, SBC-TX Ex. 24)</p>
4	MCIm INV 4	MCIm: For "Other Services" should there also be a limitation on backbilling invoices, and if so, what should that time limitation be?	Appendix VII: Invoicing §§ 5.4; 6.4	<p>The Commission adopts the contract language proposed by MCIm.</p> <p>For "Other Services", the Commission finds that there should be a limitation on back-billing services. The Commission finds that the back-billing time frame should be 12 months preceeding the Bill Date of the disputed bill in question. In fact, both SBC Texas and MCIm agree on this time frame. (Quate Direct at 23, SBC-TX Ex. 35) The Commission finds that the contract language regarding limitation on backbilling invoices for "other services" proposed by MCIm is sufficient. The Commission finds no compelling evidence in the record justifying</p>

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SBC Issue #	CLEC Name and Issue #	SBC Overarching Issue Statement CLEC Specific Issue Statement	Attachment & Sections	COMMISSION DECISION
				a need to list all “other services” along with their respective Appendix as proposed by SBC Texas.
5	MCI INV 5	SBC: Which Party’s language for prospective application should be included in this Agreement?  MCI: Is it necessary to include SBC’s provision stating that the terms of the invoicing appendix will apply prospectively?	Appendix VII: Invoicing § 5.5	The Commission adopts the contract language proposed by MCI.  The Commission finds that by definition, contractual terms and conditions do not apply until a contract becomes effective. (Hurter Direct at 24, MCI Ex. 4) It is counter-intuitive to think that time limits or stake dates are applied any other way than prospectively. The Commission found no compelling evidence in the record supporting SBC Texas’ proposed contract language. Additionally, the Commission found no compelling evidence in the record supporting SBC Texas’ argument that a new contract could potentially “reach back” into time periods covered by the existing contract. (Quate Rebuttal at 15, SBC-TX Ex. 36)  The Commission declines to adopt any contract language as proposed by MCI.

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SBC Issue #	CLEC Name and Issue #	SBC Overarching Issue Statement CLEC Specific Issue Statement	Attachment & Sections	Staff Recommendation
6	MCIm INV 6	Should changes to SBC TEXAS's billing claim dispute form be subject to approval by the CLEC User Form?	Appendix VII: Invoicing § 5.7.1	The Commission finds that SBC Texas' billing claims dispute form should not be subject to approval by the CLEC User Forum (CUF). No evidence was provided citing instances where changes to the form caused harm or discrimination to any CLEC. In fact, SBC Texas developed the form in response to CLEC requests for an alternative dispute process, and SBC Texas developed this process in conjunction with the CUF. (McNiel Rebuttal at 26, SBC-TX Ex. 23) Additionally, SBC Texas developed the billing claims dispute form for use by both CLECs and IXCs and processes for IXCs are not subject to the CUF. Therefore, requiring SBC Texas to garner approval through the CUF would preclude input by IXCs who would be impacted by any changes. (McNiel Rebuttal at 25, SBC-TX Ex. 23) The Commission finds no reason to change a process that has not proven to be discriminatory toward any party.
7	MCIm INV 7	Should SBC TEXAS disclaimer about VOIP be included in the Agreement?	Appendix VII: Invoicing § 10	<p>The Commission adopts the contract language proposed by SBC Texas.</p> <p>The Commission finds that SBC Texas' disclaimer regarding VoIP should not be included at this time. This issue will be taken up in Phase 2 of this proceeding and the Commission believes that is the appropriate time to rule upon this issue. Once the Commission hasn't ruled on the issue, the parties can then negotiate an appropriate amendment to this agreement if necessary.</p> <p>The Commission declines to adopt any contract language at this time.</p>



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SBC Issue #	CLEC Name and Issue #	SBC Overarching Issue Statement CLEC Specific Issue Statement	Attachment & Sections	COMMISSION DECISION
SBC-2	AT&T-1 CLEC Coalition 3, 5-7, 9, 12, 24	<p>Intercarrier Compensation</p> <p>a. (Joint) What is the proper definition and scope of §251(b)(5) traffic?</p> <p>b. (Joint) What types of traffic should be excluded from the definition and scope of 251(b)(5) traffic?</p> <p>c. (AT&amp;T) What calling area should be used for purposes of 251 b 5 reciprocal compensation and compensation under the FCC ISP terminating compensation plan?</p> <p>c. (SBC) What calling area(s) should be used for purposes of determining compensation for Section 251 (b)(5) Traffic and Section 251(b)(5) Traffic and/or ISP-Bound Traffic under the FCC ISP terminating compensation plan?</p> <p>c.1. Should Section 251(b)(5) Traffic be defined as calls that must originate and terminate to End Users physically located within the same common or mandatory local calling area?</p> <p>c.2. Should ISP-Bound Traffic be defined as calls that must originate from an End User and terminate to an ISP physically located within the same common or mandatory local calling area?</p> <p>d. What is the appropriate form of intercarrier compensation for IntraLATA Interexchange traffic?</p> <p>e. Should non 251/252 services such as Transit Services be negotiated separately?</p> <p>f. Is CLEC's switch(es) "actually serving" a geographically comparable area to SBC Texas' tandem switch(es) such that CLEC is entitled to the tandem interconnection rate? (See SBC Texas' proposed language in Issue AT&amp;T-8)</p> <p>g. If the CLEC switch meets the geographic coverage test should the CLEC be entitled to the mileage sensitive tandem transport element for transport between switches when CLEC only has one switch?</p>	<p>Attachment 12: §§1.1, 1.1.1, 1.2, 2.1, 11.0, 11.1.1, 11.1.2, 11.1.4</p>	<p>(a) In the <i>ISP Remand Order</i>, the FCC focused on 251(b)(5), as limited by 251(g), instead of "local" to determine the traffic subject to reciprocal compensation. Therefore, the Commission finds it appropriate to use the term "251(b)(5)" instead of the term "local" to describe the type of traffic subject to reciprocal compensation under Section 251(b)(5) of the Act.</p> <p>(c) The Commission also declines to adopt AT&amp;T's LATA-wide compensation plan because it has implications for ILEC revenue streams, such as switched access, and affects rates for other types of calls, such as intraLATA toll calls, that are beyond the scope of this proceeding. This finding is consistent with the Commission's ruling in Docket No. 21982.</p> <p>(c) Consistent with the Commission's holding in Docket No. 21982, the Commission finds that reciprocal compensation arrangements apply to calls that originate from and terminate to an end-user within a mandatory single or multi-exchange local calling area, including the mandatory EAS/ELCS areas comprised of SBC exchanges and the mandatory EAS/ELCS areas comprised of SBC exchanges and exchanges of independent ILECs. This finding is also consistent with the ISP Remand Order.</p> <p>In the ISP Remand Order, the FCC found that 251(b)(5) reciprocal compensation applies to telecommunications traffic other than exchange access, information access, and exchange services for such access provided to IXC's and information service providers. Under section 153 of the Act, "exchange access" means "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." "Telephone toll service" means</p>

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SBC Issue #	CLEC Name and Issue #	SBC Overarching Issue Statement CLEC Specific Issue Statement	Attachment & Sections	COMMISSION DECISION
		(See SBC Texas' proposed language in Issue AT&T-8)		<p>"telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service." Given the Act's definitions and the FCC's interpretation of 251(b)(5), reciprocal compensation applies to traffic that is not toll and not information access (essentially, reciprocal compensation applies to "local" non-ISP traffic).</p> <p>In contrast to "exchange access," the Act defines "telephone exchange service" as: "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge." Section 251(g) does not "carve out" telephone exchange service, from 251(b)(5) reciprocal compensation (except that the FCC found that 251(g) carved out ISP-bound traffic from reciprocal compensation). Consequently, The Commission's decision in Docket No. 21982 applying reciprocal compensation to calls that originate and terminate within the same mandatory local calling area comports with the FCC's interpretation of 251(b)(5) and the Act's definition of telephone exchange service, since no additional toll charges apply to calls within the mandatory local calling area. However, with respect to ISP-bound traffic, the Commission concluded in Docket No. 24015 that the ISP Remand Order's compensation regime applies instead of reciprocal compensation.</p> <p>(d) Since reciprocal compensation only applies to calls within a commission established local calling area, the appropriate form of intercarrier compensation for IntraLATA Interexchange</p>

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				<p>traffic which originate or terminate outside the local calling area is therefore access charges. The FCC concluded that "unless and until the Commission by regulation should determine otherwise, Congress preserved the pre-Act regulatory treatment of all the access services enumerated under section 251(g). These services thus remain subject to Commission jurisdiction under section 201 (or, to the extent they are intrastate services, they remain subject to the jurisdiction of state commissions), whether those obligations implicate pricing policies as in CompTel or reciprocal compensation. . . . Section 251(g) expressly preserves the Commission's rules and policies governing 'access . . . to information service providers' in the same manner as rules and policies governing access to IXCs." Since pre-Act regulatory treatment continues to apply to access services, intrastate access charges continue to apply to intrastate interexchange access services.</p> <p>(e) The Commission incorporates, by reference, the rationale and decision on transit issues delineated in SBC Issue 17/AT&amp;T-10.</p> <p>(f) &amp; (g) The Commission incorporates, by reference, the rationale and decision on application of tandem rates delineated in SBC Issue 15/AT&amp;T-8.</p> <p>The Commission finds that the parties should resubmit contract language to reflect the Commission's decision in Docket No. 24015.</p> <p>This issue is partially resolved as to AT&amp;T with respect to language for 11.1.4.</p>
SBC-3 Address		SBC Texas Overarching Issue: Should SBC Texas be required to comply with only generic Texas Commission reciprocal compensation decisions?		<p>Please refer to rationale and contract language decision under SBC DPL Issue - 4.</p>

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